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—John Milton

Prof. RAMESHWAR SHARMA
Principal & Controller

The SEMANTICS of INTERNATIONAL LAW

ANN VAN WYNEN THOMAS



STUDENT EDITION

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The Semantics of International Law

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Today's Clash of Ideals

by
ANN VAN WYNEN THOMAS

Foreword by Robert G. Storey
President American Bar Association

To Cornelius Van Wynen who will understand,

To Cora Jacoba Van Wynen who will be enchanted;

To Nola Briscoe Thomas who will be intrigued,

To Aaron Joshua Thomas who will be surprised.

Foreword

THE HISTORY of human social institutions there often
des a time when the basic principles upon which such
titutions rest need to be subjected to an intensive and
tical reappraisal in the light of modern and changed
nditions This reappraisal may determine whether the
rticular institution is to continue as before, whether
must be directed into new channels, or whether its
efulness is at an end and it must make way for a com
etely new institution As a social institution, law and
various branches are also subjected to such probative
quiry when there arises a question in the minds of the
blic, lay and professional alike, as to whether a certain
vision of law continues to satisfy the need for which it
is created, whether its direction of growth is progres
ve, retrogressive, or static. Whenever the demand for
ch re-examination becomes intensive, it can be felt
at there is an underlying dissatisfaction with the func-
oning of the specific field of law, which, if ignored, can
ad to undesirable consequences

Upon critical examination into a division of law under
tack, it has in many instances been demonstrated that
urists losing sight of the fact that fundamental condi
ons have become completely altered, nevertheless per-
st in their attempt to utilize the specific doctrines of a
ranch of law in an area of relationships which that law
was not designed to cover and could not effectively cover.
n such circumstances it becomes necessary to prune the
aw—to cut away the deadwood of overextension—in order
o restore contours. A complete rejection is neither requi-

t be applied to a society which has no reverence for gnity of the individual a society which eyes man from a completely mechanical point of view and gns history to an economic fate. In such woeful nstances the false premise that there is between lemocracies and the totalitarian governments a unit orce working for a common good—such as the force nternational law—is not only unrealistic but exceed y detrimental to the usefulness of international law his does not signify that there should be no further wth in international law but rather that there should a *redirection of growth There must be a more cou* rous recourse to what we have and a bolder correc- al course toward the deficiencies of international law the final analysis international law can only maintain existence through guidance by the non tangible by e moral absolutes of the spirit. By insisting on ethical ans toward whatever ends, by reconciling tradition th reason by building on the dignity of the individual, ternational law extends a guiding light and becomes sic to creative statesmanship

The author by education interest, and experience is oroughly qualified to deal with this important subject. t has been my pleasure to review her research in the outhern Methodist University Graduate Law School, nd I have been deeply impressed by her thoroughness nd sincerity I commend her thought provoking analysis.

ROBERT G STOREY

School of Law
Southern Methodist University
April 15, 1953

Acknowledgments

I want to express my appreciation to Dean Robert G Storey of Southern Methodist Uni -rsity School of Law who helped me with his iticisms and suggestions as I undertook this dy in fulfillment of the requirements for the gree of Master of Laws. I am also deeply debted to several writers on whose books and ticles I have drawn freely for my materials. he references to specific quotations and cita ons follow under appropriate chapters And to y husband, A. J Thomas Jr., who provided normous encouragement and indispensable as- istance at every stage, go my heartfelt thanks

ANN VAN WYNEN THOMAS

Dallas Texas
March 26, 1953

Contents

Introduction

THE TWENTIETH CENTURY HAS WITNESSED a profound transformation in international society, a transformation which international law can no longer afford to ignore. Admittedly international law can never achieve even partial stability if it reacts to every constitutional, economic, or social change in the life of one or of several of the members of the family of nations[1] But on the other hand, where the social basis of the national law of a number of states has undergone revolutionary and drastic philosophical changes it would be the folly of destruction for students of international law to ignore these great political and social upheavals

From the earliest times to the present, and in all countries there has been a close relationship between legal and moral notions[2] And while there are many legal rules of a mere regulatory nature,[3] having no particular moral significance the general rules of legal conduct are supposed to reflect and in fact necessarily tend to reflect the ethical standards of the community[4] Thus, international law has always been predicated on certain fundamental moral and ethical values to which civilized nations subscribe even if at times their practices have varied from their faith[5] But today various states controlling the lives and destinies of millions of people have repudiated these basic moral standards and *a fortiori*, they can therefore have little faith in the jural principles evolved therefrom

The power which these new and finally destructive

ideologies exert over the minds of men requires the world to face again the problem of the primary presuppositions of all international existence. It is now evident that no durable international settlement can possibly be arrived at unless the nations of the world accept certain common convictions and common standards as a mainstay of their own lives and of their relations with each other. Political and legal commitments require a certain amount of natural sympathy among the cojurors. The fact alone that nations share a number of interests does not necessarily guarantee an international community. There must be agreement upon certain principles of behavior fortified by agreement upon some fundamental values and beliefs. In the final analysis all theories for international order depend on a willingness of nations to live together in harmony and this willingness itself depends in turn upon some underlying unity of an ethical nature. International law or the legally binding part of the international social order is perhaps the ethical minimum, that is that portion of the social order whose enforcement the international community must secure for its bare survival. Hence where there is no measure of agreement between nations on the minimum essentials underlying international law there can be little hope for a peaceful and unified international order.

1

Ethical and Moral Nature of International Law

THERE ARE VARIOUS DEFINITIONS of international law[1] all of which are plausible for it is the privilege of every writer to delimit and designate his discipline as he thinks fit, so long as there is historic continuity and no serious disruptive break with past learning and past experience in the field.[2] For the purpose of this study international law is defined as a system of jurisprudence consisting of general principles of right equity and humanitarianism, founded upon established customs and acts of states and upon international agreements not inconsistent with standards of justice which Christian and civilized states recognize as obligatory in their relations and dealings with each other as well as with the citizens and subjects of each.

International law is composed therefore not only of rules but also of principles conceptions and standards, and from the standpoint of civilized continuity the latter are far more important than the former These principles conceptions and standards are derived from considerations of an ethical nature they concern that interrelated complex of ideas which centers around the notions of right and wrong, justice and humanity and attempt to blend these ideas into a coherent basis for the system of international law.[3]

In the affairs of nations as in the affairs of humans there is often no absolutely demonstrable right course to follow among the many combinations that are pos

Admittedly from one age to another the designation of particular actions as morally right and wrong changes, and societies in one stage of civilization are apt to differ widely from societies in another stage in the application of their ideas of good and evil [10] Such differences are entirely tenable in a world subject to man s influence as a shaper of his material and mental environment. But no civilization can live or continue to grow unless it successfully accumulates from generation to generation its collec tive experiences of good and evil. The precise denotation of the word good will change as circumstances change, the connotations of the words used to express different aspects of goodness will grow wider and deeper but the ideas behind the words cannot become less in valu^ if a civilization is to continue for once a civilization wholly discards an idea of good or evil or suffers it to decay or lose capacity for growth or change, disaster is inevitable [11]

The question of whether or not morality has any func tion in international society has been answered both in the negative and in the positive The negative approach declares that the relations between states are governed solely by power and that morality plays no part in em.[12] This view that no ethical standards are appli ble to relations between nations can be traced from [illegible]achiavelli through Spinoza and Hobbes to Hegel in hom it found its most finished and thoroughgoing ex ression. For Hegel states are complete and morally self ufficient entities and the relations between them express nly the concordance or conflict of independent wills not nited by any mutual obligation.[13]

This theory would destroy in advance the possibility of an ethical understanding among men and of a well founded international law Therefore modern interna tional legal scholars with the pragmatic bent of mind[14] tend to soften their negative by pointing out that as long as statesmen and others who influence the conduct of in ternational affairs agree—whether honestly or dishonestly

In the last analysis, the relations of states are the relations of individuals Neither domestic law nor international law is self-creating or self applying "There are men who govern," declares an ancient Chinese proverb, "but there are no laws that govern."[21] It is impossible to evade the ultimate fact that the deeds of states are deeds of persons and affect persons.

> Injuries and benefits to states by other states are injuries and benefits to individuals by way of their political selves. Whoever therefore touches a person raises an ethical question and that question comes directly under the personal code of the aggressor[22]

Accordingly, if there are ethical principles for persons, there must be ethical principles for states. There may be no moral code for nations in the sense of formulated or codified rules,[23] but there certainly exist in the minds of civilized men an "ought" and an "ought not" with respect to group actions as with respect to the actions of individuals

This thesis finds powerful support in the teachings of Chancellor Kent, who, in his *Commentaries on American Law*, wrote

> States are to be considered as moral persons having a public will capable and free to do right and wrong, inasmuch as they are collections of individuals, each of whom carries with him into the service of the community the same binding law of morality and religion which ought to control his conduct in private life[24]

If it be conceded that there are ethical principles for states, the question then arises of the purpose and importance of such principles This can be readily answered, for international morality provides the

g international law[25]

Every stage in legal evolution bears witness to the

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befo

Like all princes and rulers, ... people be hedged with ... the kings ill served by flattery and adulation. And they are betrayed by the servile hypocrisy which tells them that what is true and what is false, what is right and what is wrong, can be determined by their votes.

If I am right in what I have been saying, there has developed in this century a functional derangement of the relationship between the mass of the people and the government. The people have acquired power which they are incapable of exercising, and the governments they elect have lost powers which they must recover if they are to govern. What then are the true boundaries of the people's power? The answer cannot b... beginning let ...

... the government ... conduct of their affairs ... proposes to approve or disapprove its performance. They can remove it. They can administer the government. They cannot normally initiate and propose the form. They cannot themselves perform necessary legislation. A mass cannot govern. The people, as Jefferson said, are not "qualified to exercise themselves the Executive Department, but they are qualified to name the person who shall exercise it. ... They are not qualified to legislate, with us therefore they only choose the legislators."[7]

Where mass opinion dominates the government, there is a morbid derangement of the true functions of power. The derangement brings about the enfeeblement, verging on paralysis, of the capacity to govern. This breakdown in the constitutional order is the cause of the precipitate and catastrophic decline of Western society. It may, if it cannot be arrested and reversed, bring about the fall of the West.

The propensity to this derangement and the vulnerability of our society to it have a long and complex history. Yet the more I have brooded upon the events which I have lived through myself, the more astounding and

[7] *Works* (Ford ed. V, pp. 103 104 1892 1898) cited in Yves R. Simon, *Philosophy of Democratic Government* (1951), p. 169

CHAPTER TWO

The Malady of Democratic States

1 *Public Opinion in War and Peace*

WRITING in 1913, just before the outbreak of the war, and having in mind Queen Victoria and King Edward the VII, Sir Harry Johnston thus described how foreign affairs were conducted in the Nineteenth Century:

> In those days, a country's relations with its neighbors or with distant lands were dealt with almost exclusively by the head of the State—Emperor, King, or President—acting with the more-or less dependent Minister-of-State, who was no representative of the masses, but the employe of the Monarch. Events were prepared and sprung on a submissive, a confident, or a stupid people. The public Press criticized, more often applauded, but had at most to deal with a *fait accompli* and make the best of it. Occasionally, in our own land, a statesman, out of office and discontented, went round the great provincial towns agitating against the trend of British foreign policy—perhaps wisely, perhaps unfairly, we do not yet know—and scored a slight success. But once in office his Cabinet fell in by degrees with the views of the Sovereign and the permanent officials (after the fifties of the last century these public servants were a factor of ever-growing importance), and, as before, the foreign policy of the Empire was shaped by a small camarilla consisting of the Sovereign, two Cabinet Ministers, the permanent Under-Secretary of State for Foreign Affairs, and perhaps one representative of *la plus haute finance*.[1]

Without taking it too literally, this is a fair description of how foreign affairs were conducted before the First World War. There were exceptions. The Aberdeen gov-

[1] Sir Harry Johnston, "Common Sense in Foreign Policy," pp. 1 2, cited in Howard Lee McBain & Lindsay Rogers, *The New Constitutions of Europe* (1922), p. 139

and disbanded. The Allies were called upon to decide whether they would dictate a punitive peace or would negotiate a peace of reconciliation

In the Thirties the British and the French governments had to decide whether to rearm and to take concerted measures to contain Hitler and Mussolini or whether to remain unarmed and to appease them. The United States had to decide whether to arm in order to contain the Japanese or to negotiate with them at the expense of China

During the Second World War the British and the American governments had again to make the choice between total victory with unconditional surrender and negotiated settlements whose end was reconciliation.

These were momentous issues, like choosing at the fork of the road a way from which there is no turning back whether to arm or not to arm—whether, as a conflict blows up, to intervene or to withdraw—whether in war to fight for the unconditional surrender of the adversary or for his reconciliation The issues are so momentous that public feeling quickly becomes incandescent to them. But they can be answered with the only words that a great mass *qua* mass can speak—with a Yes or a No

Experience since 1917 indicates that in matters of war and peace the popular answer in the democracies is likely to be No For everything connected with war has become dangerous, painful, disagreeable and exhausting to very nearly everyone The rule to which there are few exceptions—the acceptance of the Marshall Plan is one of them—is that at the critical junctures, when the stakes are high, the prevailing mass opinion will impose what amounts to a veto upon changing the course on which the government is at the time proceeding. Prepare for war in time of peace? No It is bad to raise taxes, to unbalance the budget, to take men away from their schools or their jobs, to provoke the enemy. Intervene in a developing conflict? No Avoid the risk of war Withdraw from the area of the conflict? No The adversary must not be appeased. Reduce your claims on the area? No Righteousness cannot be compromised Negotiate a compromise peace as soon as the opportunity presents itself? No The aggressor must be punished Remain armed to enforce the dictated settlement? No The war is over

The unhappy truth is that the prevailing public opinion

world [illegible]

[illegible] counte- [illegible] who showed "any tenderness for the Hun," they were against any public inclined to listen to the "Hun food snivel."[3]

3 The Pattern of the Mistakes

IN ORDER to see in its true perspective what happened, we must remember that at the end of the First World War the only victorious powers were the liberal democracies of the West. Lenin, who had been a refugee in Switzerland until 1917, was still at the very beginning of his struggle to become the master of the empire of the Romanoffs. Mussolini was an obscure journalist, and nobody had dreamed of Hitler. The men who took part in the Peace Conference were men of the same standards and tradition. They were the heads of duly elected governments in countries where respect for civil liberty was the rule. Europe from the Atlantic to the Pripet Marshes lay within the military orbit of their forces. All the undemocratic empires, enemy and ally, had been destroyed by defeat and revolution. In 1918—unlike 1945—there had been no Yalta, there was no alien foreign minister at the peace conference who held a veto on the settlement.

Yet as soon as the terms of the settlement were known, it was evident that peace had not been made with Germany. It was not for want of power but for want of statesmanship that the liberal democracies failed. They failed to restore order in that great part of the world which—outside of revolutionary Russia—was still within the orbit of their influence, still amenable to their leadership, still subject to their decisions, still working within the same economy, still living in the same international community, still thinking in the same universe of discourse. In this failure to make peace there was generated the cycle of wars in which the West has suffered so sudden and so spectacular a decline.

Public opinion, having vetoed reconciliation, had made the settlement unworkable. And so when a new genera

[3] Cf. Harold Nicholson, *Peacemaking*, Chap. III.

world safe for democracy This crusade would make the whole world a democracy

As a result of this impassioned nonsense public opinion became so envenomed that the people would not countenance a workable peace, they were against any public man who showed "any tenderness for the Hun," or was inclined to listen to the "Hun food snivel."[1]

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[3] Cf Harold Nicholson, *Peacemaking* Chap III

public opinion has been insisten[illegible] aroused, [illegible] their conve[illegible] way t[illegible] good sense In the crises, howev[illegible] democratic officials—over and above their own human propensity to err—have been compelled to make the big mistakes that public opinion has insisted upon Even the greatest men have not been able to turn back the massive tides of opinion and of sentiment.

There is no mystery about why there is such a tendency for popular opinion to be wrong in judging war and peace. Strategic and diplomatic decisions call for a kind of knowledge—not to speak of an experience and a seasoned judgment—which cannot be had by glancing at newspapers, listening to snatches of radio comment, watching politicians perform on television, hearing occasional lectures, and reading a few books. It would not be enough to make a man competent to decide whether to amputate a leg, and it is not enough to qualify him to choose war or peace, to arm or not to arm, to intervene or to withdraw, to fight on or to negotiate

Usually, moreover, when the decision is critical and urgent, the public will not be told the whole truth. What can be told to the great public it will not hear in the complicated and qualified concreteness that is needed for a practical decision When distant and unfamiliar and complex things are communicated to great masses of people, the truth suffers a considerable and often a radical distortion The complex is made over into the simple, the hypothetical into the dogmatic, and the relative into an absolute Even when there is no deliberate distortion by censorship and propaganda, which is unlikely in time of war, the public opinion of masses cannot be counted upon to apprehend regularly and promptly the reality of things There is an inherent tendency in opinion to feed upon rumors excited by our own wishes and fears

4. *Democratic Politicians*

AT THE critical moments in this sad history, there have been men, worth listening to, who warned the people against their mistakes Always, too, there have been men inside the governments who judged correctly, because they were permitted to know in time, the uncensored and

tion of Germans grew up, they rebelled But by that time the [illegible] -rlike to make peac [illegible] had become too [illegible] ave prevented the [illegible] wage against Europe Having refused the risk of trying to prevent war, they would not now prepare for the war The European democracies chose to rely on the double negative of unarmed appeasement, and the American democracy chose to rely on unarmed isolation

When the unprevented war came, the fatal cycle was repeated Western Europe was defeated and occupied before the British people began seriously to wage the war And after the catastrophe in Western Europe eighteen agonizing months of indecision elapsed before the surprise and shock of Pearl Harbor did for the American people what no amount of argument and evidence and reason had been able to do

Once again it seemed impossible to wage the war energetically except by inciting the people to paroxysms of hatred and to utopian dreams So they were told that [illegible]

could be popular only if the enemy was altogether evil and the Allies very nearly perfect. This mixture of envenomed hatred and furious righteousness made a public opinion which would not tolerate the calculated compromises that durable settlements demand Once again the people were drugged by the propaganda which had aroused them to fight the war and to endure its miseries Once again they would not think, once again they would not allow their leaders to think, about an eventual peace with their enemies, or about the differences that must arise among the Allies in this coalition, as in all earlier ones How well this popular diplomacy worked is attested by the fact that less than five years after the democracies had disarmed their enemies, they were imploring their former enemies, Germany and Japan, to rearm

The record shows that the people of the democracies, having become sovereign in this century, have made it increasingly difficult for their governments to prepare properly for war or to make peace Their responsible officials have been like the ministers of an opinionated and willful despot Between the critical junctures, when

This devitalization of the governing power is the malady of democratic states As the malady grows the executives become highly susceptible to encroachment and usurpation by elected assemblies, they are pressed and harassed by the haggling of parties, by the agents of organized interests, and by the spokesmen of sectarians and ideologues The malady can be fatal It can be deadly to the very survival of the state as a free society if, when the great and hard issues of war and peace of security and solvency, of revolution and order are up for decision, the executive and judicial departments with their civil servants and technicians, have lost their power to decide

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the men of the counties They are to meet, and the King will ask the Knights what aid they will grant to him. This is the basic relationship The government can act. This it can act, it decides what action should be taken, and it proposes the measures, it then asks the representatives of those who must supply the money and the men for the means to carry out its decisions The governed, through their representatives, the two Knights of the Shire from each county, give or withhold their consent.

From the tension and the balance of the two powers—that of the ruler and that of the ruled—there evolved the written and the unwritten contracts of the constitution. The grant of aid by the ruled must be preceded by the ruler's redress of their grievances. The government will be refused the means of governing if it does not listen to the petitions, if it does not inform, if it does not consult, if it cannot win the consent of, those who have been elected as the representatives of the governed.

The executive is the active power in the state, the asking and the proposing power The representative assembly is the consenting power, the petitioning the approving and the criticizing, the accepting and the refusing power The two powers are necessary if there is to be order and freedom. But each must be true to its own nature, each limiting and complementing the other The government must be able to govern and the citizens must be represented in order that they shall not be oppressed. The health of the system depends upon the relationship of the two powers If either absorbs or destroys the functions of the other power, the constitution is deranged.

There is here a relationship between governors and governed which is, I would contend, rooted in the nature of things At the risk of reasoning by analogy, I would suggest that this duality of function within a political society has a certain resemblance to that of the two sexes In the act of reproduction each sex has an unalterable physiological function. If this function is devitalized or is confused with the function of the other sex, the result is sterility and disorder

In the final acts of the state the issues are war and peace, security and solvency, order and insurrection. In these final acts the executive power cannot be exercised by the representative assembly Nor can it be exercised after the suppression of the assembly For in the derangement of the two primary functions lie the seeds of disaster

... of the vital interests

...

gates elected to nine state conventions were deemed to be entitled to act as The People of the United States.

The inhabitants of the United States who were quali- ...

... figures. But according to the census of 1790 the popula- ...

... per cent when the Constitution was ordained. They were not yet 40 per cent in 1952 when, except under the special conditions in the South, we had universal adult suffrage. Manifestly,

[a] These figures are from a memorandum prepared for me by my friend, Prof. Allan Nevins. In his covering letter, January 24, 1952, he says

"Anyone who writes about election figures in our early national history treads upon very unsafe ground. Trustworthy ... statistics and the ...

years they had changed greatly, and in a hundred years,

[illegible]

born " *The People* are a co[illegible]
say, which lives on while individuals come into it and go
out of it.

[illegible] Bentham cannot have been right when

[illegible]

[illegible] and the security [illegible] the end and the

[illegible]

in that so many are dead and so many are not yet born
Yet this corporate being, though so insubstantial to our

[illegible]

never sit under

This invisible inaudible and so largely nonexistent community gives rational meaning to the necessary objectives of government. If we deny it, identifying the people with the prevailing pluralities who vote in order to serve as Bentham has it, "their pleasures and their security" where and what is the nation and whose duty and business is it to defend the public interest? Bentham leaves us with the state as an arena in which factions contend for their immediate advantage in the struggle for

[4] *Ibid.* Ch. III Sec. I.
[5] Edmund Burke's speech on *Conciliation with America* (1775)

once at the beginning of the imperial power would have to happen again whenever the throne was vacant. As the imperium "escheats or reverts to the people", and the people had then to choose a new emperor, they might even "translate" the empire from one nation to another, in this instance from the Greeks to the Germans. Needless to say "the people" who were presumed to have this power, had neither votes nor any other means of making their will known. It was presumed that they wished to have their power exercised for them. In the coronation of Charlemagne, the Pope did this: he "merely declared and exercised the people's will."

All this seems long ago and far away. But if we reject virtual representation, the question remains: if the Pope or the king, or the parliament of magnates cannot represent *The People*, how do a plurality of voters truly declare and exercise *The People's* will? It sounds incongruous to modern ears that the Pope should represent the people. But is it so congruous that the people should be represented by a count of the votes of some persons? The conundrum springs from the fact that while *The People* as a corporate body are the true owners of the sovereign power, The People, as an aggregate of voters, have diverse conflicting self-centered interests and opinions. A plurality of them cannot be counted upon to represent the corporate nation.

The distinction upon which I am dwelling does not, as one might suppose, cease to matter when the voters become enormously many. Cannot a multitude of voters be regarded as the practical equivalent of all the people? They cannot be. To multiply the voters makes it no more probable that a plurality of them will truly represent the public interest. Our experience with mass elections in the twentieth century compels us, I think, to the contrary conclusion: that public opinion becomes less realistic as the mass to whom information must be conveyed, and argument must be addressed, grows larger and more heterogeneous.

All this will seem less odd if we remind ourselves that political democracy, as we know it in this century, is a very recent political phenomenon. The moral presumption in favor of universal suffrage may perhaps be said to have been laid down by the American and the French Revolutions at the end of the eighteenth century. But (until the end of the nineteenth century) the actual ad

once at the beginning of the imperial power would have to happen again whenever the throne was vacant. As the imperium "escheats or reverts to the people", and the people had then to choose a new emperor, they might even "translate" the empire from one nation to another, in this instance from the Greeks to the Germans. Needless to say, "the people," who were presumed to have this power, had neither votes nor any other means of making their will known. It was presumed that they wished to have their power exercised for them. In the coronation of Charlemagne, the Pope did this: he "merely declared and exercised the people's will."

All this seems long ago and far away. But if we reject virtual representation, the question remains: if the Pope or the king, or the parliament of magnates, cannot represent *The People*, how do a plurality of voters truly declare and exercise *The People's* will? It sounds incongruous to modern ears that the Pope should represent the people. But is it so congruous that the people should be represented by a count of the votes of some persons? The conundrum springs from the fact that while *The People* as a corporate body are the true owners of the sovereign power, The People, as an aggregate of voters, have diverse, conflicting self-centered interests and opinions. A plurality of them cannot be counted upon to represent the corporate nation.

The distinction upon which I am dwelling does not, as one might suppose, cease to matter when the voters become enormously many. Cannot a multitude of voters be regarded as the practical equivalent of all the people? They cannot be. To multiply the voters makes it no more probable that a plurality of them will truly represent the public interest. Our experience with mass elections in the twentieth century compels us, I think, to the contrary conclusion: that public opinion becomes less realistic as the mass to whom information must be conveyed, and argument must be addressed, grows larger and more heterogeneous.

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CHAPTER FOUR

The Public Interest

1 *What Is the Public Interest?*

WE ARE examining the question of how, and by whom, the interest of an invisible community over a long span of time is represented in the practical work of governing a modern state

In ordinary circumstances voters cannot be expected to transcend their particular, localized and self regarding opinions As well expect men laboring in the valley to see the land as from a mountain top In their circumstances which as private persons they cannot readily surmount, the voters are most likely to suppose that whatever seems obviously good to them must be good for the country, and good in the sight of God.

I am far from implying that the voters are not entitled to the representation of their particular opinions and interests But their opinions and interests should be taken for what they are and for no more They are not—as such—propositions in the public interest. Beyond their being, if they are genuine, a true report of what various groups of voters are thinking, they have no intrinsic authority The Gallup polls are reports of what people are thinking. But that a plurality of the people sampled in the poll think one way has no bearing upon whether it is sound public policy For their opportunities of judging great issues are in the very nature of things limited, and the statistical sum of their opinions is not the final verdict on an issue It is rather, the beginning of the argument. In that argument their opinions need to be confronted by the views of the executive, defending and promoting the public interest. In the accommodation reached between the two views lies practical public policy

Let us ask ourselves, How is the public interest discerned and judged? From what we have been saying we know that we cannot answer the question by attempting to forecast what the invisible community, with all its unborn constituents would, or might say if and when it

rays balanced. The true nature of the reckoning would be clearer if, instead of talking about "an unbalanced budget," we spoke of a budget balanced not by taxes but

cannot be reduced to precise figures, prudent men make estimates as to where the equations balance.

Their decisions as to where to balance the accounts must reflect other judgments—as to what, for example, are the military requirements in relation to foreign af-

We may say, then, that public policy is made in a field of equations The issues are the choices as to where the balance is to be struck. In the reality of things X will ex-

CHAPTER FIVE

The Two Functions

1. The Elected Executive

OUR INQUIRY has shown, I believe, that we cannot take popular government for granted, as if its principles were settled and beyond discussion We are compelled to agree with Sir Henry Maine who wrote, some seventy years ago, that "the actual history of popular government since it was introduced in its modern shape, into the civilized world," does "little to support the assumption that popular government has an indefinitely long future before it. Experience rather tends to show that it is characterized by great fragility, and that since its appearance, all forms of government have become more insecure than they were before"[1]

We have been dwelling upon the devitalization of the executive power as the cause of the fragility that Maine speaks of It is I have been saying, the disorder which results from a functional derangement in the relationship between the executive power on the one hand, the representative assemblies and the mass electorates on the other hand.

Democratic states are susceptible to this derangement because congenitally the executive, when dependent on election, is weaker than the elected representatives The normal drainage of power in a democratic state is away from the governing center and down into the constituencies[2] And the normal tendency of elections is to reduce elected officers to the role of agents or organized pluralities Mod-

[1] Sir Henry Maine, *Popular Government* (1886), p 20.

[2] Yves R. Simon *Philosophy of Democratic Government* p 136, quotes Jefferson *Notes on Virginia* (Memorial ed., Washington, 1903) Vol. II, pp 162 163 (the writer is surveying what he terms the "capital defects of the constitution") "All the powers of government, legislative, executive, and judiciary, result to the legislative body The concentrating these in the same hands is precisely the definition of despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands and not by a single one. O... ...d and seventy three despots would surely

2 *The Protection of the Executive*

DURING the nineteenth century good democrats were primarily concerned with insuring representation in the assemblies and with extending the control of the assemblies over the executive power It is true that the problem of the inadequate executive, overridden and dominated by the assembly, was very much in the minds of the Founding Fathers at the Philadelphia convention, and it has been a continuing concern of the critics and opponents of democracy But until the twentieth century the problem was not sharply and urgently posed That there was such a problem was well known But it was not the immediate problem [1]

For some generations before 1914, the West enjoyed fine political weather Moreover, the full force of the coming enfranchisement, emancipation and secularization of the whole population had not yet worked its consequences Governments still had authority and power, which were independent of the assemblies and the electorates They still drew upon the traditional sources of authority—upon prescription hereditary prerogative, and consecration.

Yet the need to protect the executive and judicial powers from the representative assemblies and from mass opinion has long been understood [2] Many expedients have been devised to soften, to neutralize to check and to balance the pressure of parties factions, lobbies, sects The expedients have taken, says Bryce, two general forms, the one being to put constitutional restrictions upon the assembly and the other "by a division of the whole power of the people" to weaken it.[3] This has been done by electing the legislature and the executive separately, or by having the legislative bodies elected by the differing constituencies and at different times

The constitutional mechanisms have never themselves been sufficient to protect the executive And much invention and reforming energy have been applied to finding

[1] But cf Woodrow Wilson, *Congressional Government* Ch. 5

[2] Hamilton, Jay Madison, *The Federalist* (Modern Library), No. 48 pp 322 326 No 49 pp. 330-332 No 71 pp 464-466.

[3] James B[illegible]dern *Democracies* (1921), Vol. II Ch LXIII.

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[5] James Bryce, *Modern Democracies* (1921), Vol. II Ch. LXIII.

...e multitude of the disciples to them and said, ...

... says, "The Pope is elected by cardinals, yet he re... his powers from God immediately"[6] The same ...

...ction did not bind the ruler to the electors. Both par... to the transaction were bound only to the office, the ...

...osing, not someone to represent them to the govern-...

...nsider ...
...ntative is ...
... general ...

[6] Yves R. Simon, *op. cit.*, p. 174
[7] Hamilton, Jay, Madison, *op. cit.*, No. 10, pp. 55-62.

threatening the security, the solvency, and the liberties of the state

In the traditions of Western society, civilized government is founded on the assumption that the two powers exercising the two functions will be in balance—that they ll check, restrain, compensate, complement, inform and

money and men for his wars, he summoned representatives of the counties and the boroughs, who had the money and the men he needed But the imponderable powers, together with very considerable power in land

expenditures of men and of money The executive has, at the same time, been deprived of

threatening the security, the solvency, and the liberties of the state

In the traditions of Western society ment

each one the other complement, inform and

In this century, the balance of the two powers has been seriously upset Two great streams of evolution have converged upon the modern democracies to devitalize, to enfeeble and to eviscerate the executive powers One is the enormous expansion of public expenditure and reconstruction assemblies ecutive dep to enfeeble of the large majority of the democratic peoples the growing incapacity in intangible realities This has stripped the government of that imponderable authority which is derived from tradition, immemorial usage, consecration, veneration, prescription prestige heredity hierarchy

At the beginning of our constitutional development the King, when he had mastered the great barons was the proprietor of the greatest wealth in the was also the point powers to bind money and men needed tives of the counties and the boroughs, who had the money and the men he needed. But the imponderable powers together with very considerable power in land and in men, were still in the King's own hands Gradually over the centuries the power of the Parliament over the supplies of the government grew larger They had to appropriate a larger proportion of a much greater total. At the same time in the white light of the enlightenment and the secularization of men's minds, the imponderable powers of the crown diminished.

Under the stress and the strain of the great wars of the twentieth century, the executive power has become elaborately dependent upon the assemblies for its enormous expenditures of men and of money The executive has, at the same time, been deprived of very nearly all of his imponderable power fearing the action of the representative assembly he is under great temptation to outwit it or bypass it, as did Franklin D Roosevelt in the period of

CHAPTER SIX

The Totalitarian Counterrevolution

1. *Certain of Its Lessons*

WE CAN learn something about the kind of incapacity which has brought on disaster for the modern democracies by the nature of the counterrevolutions that have undermined and overthrown so many of them. There are various types of counterrevolutions. The most notable are the Soviet Communist, Italian Fascist, German National Socialist, Spanish Falangist, Portuguese Corporatist, the Titoist, and Peronist. Besides these organized counterrevolutionary movements, professing doctrines of an antiliberal and undemocratic character, there is, in large areas of the world, a very strong tendency to nullify the democratic system behind the façade of democratic institutions. The countries where elections are free and genuine, where civil liberty is secure, are still powerful. But they embrace a shrinking minority of mankind.

Now in all these counterrevolutionary movements there are two common characteristics. One is the separation of the governing power from the large electorate. In the totalitarian states this is done by not holding free elections; in the great number of nontotalitarian but also nondemocratic states, it is done by controlling and rigging the elections.

The other common characteristic of the counterrevolutions is that political power, which is taken away from the electorate, the parties and the party bosses, is then passed to an elite corps marked off from the mass of the people by special training and by special vows. The totalitarian revolutions generally liquidate the elite of the old regime, and then recruit their own elite of specially trained and specially dedicated and highly disciplined men. Elsewhere, when the liberal democratic system fails, the new rulers are drawn from the older established elites—from the army officers, from the clergy, the higher bureaucracy and the diplomatic corps, from university professors.

ey will be governed without being represented, there no doubt at all as to how the issue will be decided hey will choose . . . to be pater- al, . . . atens to be ratr . . . without be- ng . . . the ideal of freedom and of democracy will long be allowed *to stand in* the way of their being governed

The plight of the modern democ . . . have still . . . sequence . . . The end . . . for democracy and is safely democratic is shrunken It is still shrinking For the *disorder* which has been incapacitating the democracies in this century is, if anything, becoming more virulent as time goes on

A *continuing* practical failure to govern will lead—no one can say in what form and under . . . ters—to . . . nent of . . . nd and . . . It is a . . . *radical* . . . enough . . . to resist the encroachment of the assemblies and of mass opinions and strong enough to guarantee private liberty against the pressure of the masses

It would be foolish to attempt to predict whether the crisis of the democratic state will be resolved by such an internal restoration and revival or by counterrevolution. No doubt the danger of counterrevolution is *greater in* countries where the margins of life are thinner No doubt the prospects of a restoration and revival are best in countries where the traditions of civility, as the public philosophy of Western society, have deep roots and a long history

which was just in the way of accommodating itself to a newly enfranchised mass of voters, and the French *noblesse* of the *Ancien Régime*

He went on to reflect that

> from an early time a fundamental difference existed between the behavior of the governing classes in England and in France The nobility, the cornerstone of medieval society revealed in England a peculiar ability to merge and mix with other social groups, while in France it tended on the contrary, to close its ranks and preserve its original purity of birth.
>
> In the earlier Middle Ages all Western Europe had a similar social system But some time in the Middle Ages, one cannot say exactly when, a change pregnant with tremendous consequences occurred in the British Isles and in the British Isles only—the English nobility developed into an open aristocracy while the continental *noblesse* stubbornly remained within the rigid limits of a caste

This, observes de Tocqueville, is the most revolutionary fact in English history, and he claims to have been the first to observe its importance and to grasp its full significance It is truly a deep and illuminating observation on the conditions which are favorable to a healthy and progressive evolution of democracy and on the conditions which make it morbid and degenerative The crucial difference is between what we might call enfranchisement by assimilation into the governing class, as exemplified in England and, *per contra* enfranchisement by the overthrow and displacing of the governing class as exemplified in France In the one the government remains but becomes more responsible and more responsive, in the other, the government is overthrown with the liquidation of the governing class

Although the two ways of evolution appear to have the same object—a society with free institutions under popu-

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ica and France which are carefully stated in special books written at great length and in elaborate form, his ideas about England are more impressionistic in nature scattered as they are in no particular order among volumes of correspondence sometimes appearing in a bunch in the *Journal de Voyage* sometimes as sudden asides in the big systematic works, emphasizing and defining a certain trend ...parison and opposition."

who were not, like those he saw living at the Court of Versailles, exclusive and incompetent, corrupt, unteachable and unconcerned.

> "Would you know the story in brief, of almost all our wretchedness?" asked Diderot "Here it is. There existed the natural man, and into this man was introduced an artificial man, whereupon a civil war arose within him lasting through life . . If you propose to become a tyrant *over* him, . do your best to poison him with a theory of morals against nature, impose every kind of fetter on him, embarrass his movements with a thousand obstacles, place phantoms around him *to* frighten him Would you see him happy and free? Do not meddle with his affairs. I appeal to every civil, religious and political institution, examine these closely, and, if I am not mistaken, you will find the human species, century after century subject to a yoke which a mere handful of knaves chose to *impose on* it. . Be wary of him who seeks to establish order, to order is to obtain the mastery of others by giving them trouble.[4]

If we compare the mood of this passage with that of the Declaration of Independence, the work of the other brand of revolutionists, we must be struck by the nihilism of Diderot Diderot had been exasperated to a blind destructive despair by the rigidity of the French governing caste He could not feel that there was anything to be done with any government, judging by the one he suffered under, except to abolish it.

Jefferson and his colleagues, on the other hand, were interested in government They were in rebellion because they were being denied the rights of representation and of participation which they, like other subjects of the same King would have enjoyed had they lived in England The Americans were in rebellion against the "usurpations" of George III not against authority as such but against the abuse of authority The American revolutionists had in fact participated in the colonial governments They intended to play leading parts, as indeed they did, in the new government. Far from wishing to overthrow the authority of government, or to deny and subvert, as Diderot did, the moral foundations of authority, they went into rebellion

[4] *Ibid*., pp. 220-221

human society Again and again it has been proved how effective is this formula for arousing, sustaining and organizing men's energies for revolution: to declare that [illegible] has been imposed upon the many by the

[illegible]

[illegible]ated, therefore, to the notion that the act of revolution [illegible]

[illegible]

masses is victorious over the few, there will exist the classless society without coercion and violence and with freedom for all This formula reappears whenever conditions are revolutionary—that is to say, when necessary *reforms* are being refused The formula is the strategy of rebellion of *those* who are unable to obtain the redress of grievances The rulers are to be attacked So they are isolated. They are few [illegible]

first in order to gain admittance into, and then to take possession of, the organs of government

When they declared that "a prince (George III) whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people," they were not saying that there was *no one* who was fit to be the ruler of a free people They were imbued with the English idea that the governing class must learn to share its special prerogatives by admitting new members The American Revolutionists were themselves the new members who had been unjustly, in fact illegally, excluded from the government of the colonies They themselves meant to govern the colonies after they had overthrown the government of the King They were not nihilists to whom the revolutionary act of overthrowing the sovereign is the climax and consummation of everything

2. *The Paradigm of Revolution*

OF THE two rival philosophies, the Jacobin is almost everywhere in the ascendant It is a ready philosophy for men who, previously excluded from the ruling class, and recently enfranchised, have no part in the business of governing the state, and no personal expectation of being called upon to assume the responsibilities of office The Jacobin doctrine is an obvious reaction, as de Tocqueville's observation explains, to government by a caste When there is no opening for the gradualness of reform and for enfranchisement by assimilation, a revolutionary collision is most likely

The Jacobin doctrine is addressed to the revolutionary collision between the inviolable governing caste and the excluded men claiming the redress of their grievances and their place in the sun Though it professes to be a political philosophy, the doctrine is not in fact, a philosophy of government It is a gospel and also a strategy for revolution It announces the promise that the crusade which is to overthrow the ruling caste will by the act of revolution create a good society

The peculiar essence of the dogma is that the revolution itself is the creative act Towards the revolution as such, because it is the culmination and the climax all the labor and the sacrifice of the struggle are to be directed The revolutionary act will remove the causes of ev

"be led of the spirit" and would not be "under the law."

[illegible]

his own regeneration. Instead there were to be [illegible]

[illegible]

3. *Democratic Education*

We live long enough after the new gospel was proclaimed to have seen what came of it. The post-revolutionary man, enfranchised and emancipated, has not turned out to be the New Man. He is the old Adam. Yet the future of democratic society has been staked on the promises and [illegible]

[illegible] the schools.

Its popularity is easily accounted for. It promises to solve the problem which is otherwise so nearly insoluble—how to educate rapidly and sufficiently the ever-expanding masses who are losing contact with the [illegible]

[illegible] the family, the churches and of the local community have combined to make the demand upon the schools almost impossibly big.

Not only do the schools have to teach the arts and [illegible]

[illegible] life. Wh[illegible] where n[illegible] democr[illegible] recruiting and training enough teachers, of supporting

"be led of the spirit" and would not be "under the law" But in the Jacobin gospel, this transformation was to be achieved by the revolutionary act of emancipation from authority The religious end was to be reached, but without undergoing the religious experience There was to be no dark night of the soul for each person in the labor of his own regeneration Instead there were to be riots and strikes and votes and seizure of political power Instead of the inner struggle of the individual soul, there was to be one great public massive, collective redemption.

3 *Democratic Education*

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For the Jacobin doctrine has pervaded the theory of mass education in the newly enfranchised mass democracies In America and in most of the newer liberal democracies of the Western world, the Jacobin heresy is, though not unchallenged and not universal, the popular and dominant theory in the schools

Its popularity is easily accounted for It promises to solve the problem which is otherwise so nearly insoluble —how to educate rapidly and sufficiently the ever-expanding masses who are losing contact with the traditions of Western society The explosive increase of the population in the past hundred and fifty years, its recent enfranchisement during the past fifty years the dissolution, or at least the radical weakening of the bonds of the family, the churches and of the local community have combined to make the demand upon the schools almost impossibly big.

Not only do the schools have to teach the arts and sciences to a multiplying mass of pupils They have also to act in the place of the family, the household economy, the church, and the settled community, and to be the bearers of the traditions and the disciplines of a civilized life What the school system could do has never been anywhere nearly equal to the demands upon it. The modern democracies have never been willing to pay the price of recruiting and training enough teachers, of supporting

... and person in the l ... of ...

3 *Democratic Education*

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consciously but precisely and surely will what is best for themselves from infancy on, then there is in the very nature of things a guarantee that popular government must succeed

The best government will be the one which governs

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at [illegible] a success of his own career, the instinctive rightness and righteousness of the people can be relied upon for everything else

This is a convenient and agreeably plausible escape from reality Pestalozzi described it by saying that . . .

> Sound Education stands before me symbolized by a tree planted near fertilizing water A little seed, which
>
> whole tree is an uninterrupted chain of organic parts, the plan of which existed in its seed and root. Man is similar to the tree In the newborn child are hidden those faculties which are to unfold during life[13]

The *metaphor* reveals very neatly how the Jacobin theory inhibits education In no way the

he problems of

Pestalozz

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ilizing t [illegible] planted, grow up and

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[13] *Encyclopedia of Religion and Ethics*, Vol. V, p 166

is the role of reason merely to be an instrument [illegible] then the mission of the schools is

[illegible]

is to possess.

From Jacobinism to Leninism

[illegible]

e ruins of feudal society, did not make an end of class ntagonisms It merely set up new classes in place of the ld'

As Marx and Engels were scholars and men of the vorld, they should not have been surprised to find that the history of all human society past and present has [illegible]

[illegible]

world as it is must be transformed, the day is soon to come when history, reaching its culmination, will end, and there will be no more struggles So Marx and Engels decided that one more, though this time the conclusive and the final revolution was called for [illegible]

[illegible] the existence of class antagonisms and of [illegible]

[illegible] with its classes and class antagonisms

act, he replaced it with the terrible doctrine that utopia must be brought about by an indefinitely prolonged process of unlimited revolution which would exterminate all

while Lenin s solution of the crisis within the revolutionary movement 'marked the culmination of a process" this was "an event which altered the history of our world. [11]

In 1903 at the conference of the Russian Social Democratic Party which began in Brussels and ended in London, Lenin was asked by a delegate named Posadovsky "whether the emphasis laid by the hard Socialists upon the need for the exercise of absolute authority by the revolu

Posadovsky asked whether the basic, minimum civil liberties—"the sacrosanctity of the person"—could be infringed and even violated if the party leader so decided

uvcu in Western Europe and was much respected by the leaders of Western Socialism Plekhanov was the very symbol of civilized scientific" thinking among Russian revolutionaries "Plekhanov speaking solemnly and with a splend d disregard for

assembly elected by the Russian people after the revolu

[1] Cf Eric Voegelin The *New Science of Politics* particular Ch. IV et seq also J L. Talmon, *The Rise of Totalitarian Democracy*

[11] Isaiah Berlin, "Political Ideas in the Twentieth Century" (*Foreign Affairs* April 1950, Vol. XXVIII, No 3 pp 364-366)

5. *The Overpassing of the Bound*

This is the root of the matter, and it is here that the ultimate issue lies. Can men, acting like gods, be appointed to establish heaven on earth? If we believe that they can be, then the rest follows. To fulfill their mission they must assume a godlike omnipotence. They must be jealous gods, monopolizing power, destroying all rivals, compelling exclusive loyalty. The family, the churches, the schools, the corporations, the labor unions and co-operative societies, the voluntary associations and all the arts and sciences, must be their servants. Dissent and deviation are treason and quietism is sacrilege.

But the monopoly of all power will not be enough. There remains the old Adam. Unless they can remake the fallen nature of a man, the self-elected gods cannot make a heaven of the earth. In the Jacobin gospel of the eighteenth century, and even in the Marxist gospel of the nineteenth century, the new man would be there when the artificial garments were removed—when once he was emancipated by the revolutionary act from the deformation imposed upon him by the clergy, the nobility and the bourgeoisie. A hundred years later the new man was nowhere in sight. So the early and softer gospel gave way to a later and infinitely harder one. The new man and the new heaven on earth demanded the remaking of pre-Leninist and pre-Hitlerian man. The decrees of history as revealed to Marx, and the decrees of nature as revealed to Hitler, had to be carried out.

But in order to do that, the human species had first to be transformed—or failing that, exterminated. Destiny called upon the mortal god to make surviving mankind "an active unfailing carrier," as Hannah Arendt says, "of a law to which human beings would otherwise only passively and reluctantly be subject." [10]

In the eyes of its devotees, this is not an inhuman and satanic doctrine. It is above and beyond humanity. It is for the superman that its gospel announces. The ruthlessness, the arbitrariness, the cruelty are not monstrous

[10] Hannah Arendt, *Ideology and Terror. A Novel Form of Government.* From the *Review of Politics* (published at the University of Notre Dame, July, 1953), Vol. XV, No. 3.

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[illegible]

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[illegible]

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[illegible]

a heaven on the earth [illegible]

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In [illegible] satan [illegible] for th[illegible] ness, [illegible]

Hannah Arendt *Ideology and Terror A Novel Form of Government* From the *Review of Politics* (published at the University [illegible] Vol XV, No 3

5 The Overpassing of the Bound

This is the root of the matter, and it is here that the ultimate issue lies. Can men, acting like gods, be appointed to establish heaven on earth? If we believe that they can be, then the rest follows. To fulfill their mission they must assume a godlike omnipotence. They must be jealous gods, monopolizing power, destroying all rivals, compelling exclusive loyalty. The family, the churches, the schools, the corporations, the labor unions and co-operative societies, the voluntary associations and all the arts and sciences, must be their servants. Dissent and deviation are treason and quietism is sacrilege.

But the monopoly of all power will not be enough. There remains the old Adam. Unless they can remake the fallen nature of a man, the self-elected gods cannot make a heaven of the earth. In the Jacobin gospel of the eighteenth century, and even in the Marxist gospel of the nineteenth century, the new man would be there when the artificial garments were removed—when once he was emancipated by the revolutionary act from the deformation imposed upon him by the clergy, the nobility and the bourgeoisie. A hundred years later the new man was nowhere in sight. So the early and softer gospel gave way to a later and infinitely harder one. The new man and the new heaven on earth demanded the remaking of pre-Leninist and pre-Hitlerian man. The decrees of history as revealed to Marx, and the decrees of nature as revealed to Hitler, had to be carried out.

But in order to do that, the human species had first to be transformed—or failing that, exterminated. Destiny called upon the mortal god to make surviving mankind "an active unfailing carrier," as Hannah Arendt says, "of a law to which human beings would otherwise only passively and reluctantly be subject." [13]

In the eyes of its devotees, this is not an inhuman and satanic doctrine. It is above and beyond humanity. It is for the superman that its gospel announces. The ruthlessness, the arbitrariness, the cruelty are not monstrous

[13] Hannah Arendt, *Ideology and Terror: A Novel Form of Government*. From the *Review of Politics* (published at the University of Notre Dame, July 1953), Vol. XV, No. 3.

[illegible]

[illegible] ivility, man's second and more rational nature must master his first and more elemental.

The Jacobins and their successors made a political religion founded upon the [illegible] gospel they founded a popular religion of the rise of the masses to power. Lenin, Hitler and Stalin, the hard totalitarian Jacobins of the twentieth century, carried this movement and the logical implications of its gospel further and further towards the very bitter end.

And what is that bitter end? It is an everlasting war with the human condition: war with the finitude of man and with the moral ends of finite men, and, therefore, war against freedom, against justice, against the laws and against the order of the good society—as they are conserved in the traditions of civility, as they are articulated in the public philosophy.

and uncivilized selves Men have been barbarians much longer than they have been civilized. They are only precariously civilized, and within us there is the propensity, persistent as the force of gravity, to revert under stress and strain, under neglect or temptation, to our first natures

Rousseau and the Jacobins, Marx and the nineteenth-century socialists did not introduce new impulses and passions into men. They exploited and aggravated impulses and passions that are always there In the traditions of civility, man s second and more rational nature must master his first and more elemental.

The Jacobins and their successors made a political religion founded upon the reversal of civility Instead of ruling the elemental impulses, they stimulated and armed them Instead of treating the pretension to being a god as the mortal sin original, they proclaimed it to be the glory and destiny of man. Upon this gospel they founded a popular religion of the rise of the masses to power Lenin, Hitler and Stalin, the hard totalitarian Jacobins of the twentieth century, carried this movement and the logical implications of its gospel further and further towards the very bitter end.

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The chemistry of our bodies is never mistaken. The reaction of one chemical element to another chemical element is always correct, is never misled by misinforma-

cannot be

Why do men make mistakes? Because an important part of human behavior is reaction to the pictures in their heads. Human behavior takes place in relation to a pseudo-environment—a representation, which is not quite the

ciently devoted to the idea for a long enough time.

Nothing would happen to Pike's Peak if the idea of removing it were merely proclaimed and celebrated. The idea would have to become, like the idea of winning a war, the object and the focus of the nation's energies.

project.

BOOK TWO

The Public Philosophy

CHAPTER EIGHT

The Eclipse of the Public Philosophy

1. *On the Efficacy of Ideas*

THERE are those who would say, using the words of philosophers to prove it, that it is the characteristic illusion of the tender-minded that they believe in philosophy Those who can, do, those who cannot, teach and theorize And being theorists by profession, they exaggerate the efficacy of ideas, which are mere airy nothings without mass or energy, the mere shadows of the existential world of substance and of force, of habits and desires, of machines and armies

Yet the illusion, if it were one, is inordinately tenacious It is impossible to remove it from the common sense in [illegible] daylight [illegible] The [illegible] non- [illegible] what [illegible] hools and churches All their effort would be irrelevant, indeed nonsense, like an argument about what Nebuchadnezzar should be served for tomorrow morning s breakfast

The most thoroughgoing skeptic is unable, in practice, to make a clean sweep—to say that since ideas have no consequences there is no such thing as a good idea or a bad one, a true idea or a false one For there is no escaping the indubitable fact of experience that we are often

mistaken, and that it makes a difference to have been wrong.

The chemistry of our bodies is never mistaken. The reaction of one chemical element to another chemical element is always correct, is never misled by misinformation, by untruth, and by illusion. The doctor can be mistaken about the chemistry of his patient, having failed to detect a substance which falsifies his diagnosis. But it is only the doctor who can be wrong; the chemical process cannot be.

Why do men make mistakes? Because an important part of human behavior is reaction to the pictures in their heads. Human behavior takes place in relation to a pseudo-environment—a representation, which is not quite the same for any two individuals, of what they suppose to be —not what *is*—the reality of things.[1] This man made, this cultural environment, which has its being in the minds of men, is interposed between man as a biological organism and the external reality. It is in this realm that ideas are efficacious. They are efficacious because men react to their ideas and images, to their pictures and notions of the world, treating these pictures as if they were the reality.

The airy nothings in the realm of essence are efficacious in the existential world when a man, believing it to be true or good, treats the idea as if it were the reality. In this way faith in an idea can quite literally remove a mountain. To be sure no man's idea can remove a mountain on the moon. But if the American people took it into their heads that life would not be worth living until Pike's Peak was in the suburbs of Chicago, they could move Pike's Peak. They *could* do it if they and their descendants were sufficiently devoted to the idea for a long enough time.

Nothing would happen to Pike's Peak if the idea of removing it were merely proclaimed and celebrated. The idea would have to become like the idea of winning a war, the object and the focus of the nation's energies. Then the idea would operate in the minds of men who voted, who planned, who would engineer the undertaking, who would raise the money, would recruit the labor, would procure the equipment, and—shall we say—would suppress the mounting resistance of the objectors to the project.

Because ideas have the power to organize human be-

[1] Cf. [illegible] Public Opinion Chapters I to X.

no Englishmen, and that when Homer was alive there were no Romans? Quite certainly, men have acquired the ways of thinking, feeling and acting which we recognize as their ethnic, national, class and occupational characteristics. Comparatively speaking these characteristics are, moreover, recently acquired. Even within the brief span of historical time characters have been acquired and have been lost and have been replaced by other characters. This is what gives to man's history, despite his common humanity, its infinite variety.

Because human nature is, as Hocking puts it, "the most plastic part of the living world, the most adaptable, the most educable,"[4] it is also the most mal-adaptable and mis-educable. The cultural heritage which contains the whole structure and fabric of the good life is acquired. It may be rejected. It may be acquired badly. It may not be acquired at all. For we are not born with it. If it is not transmitted from one generation to the next, it may be lost, indeed forgotten through a dark age [illegible]

and [illegible]

[4] William [illegible] Hocking, *Human Nature and Its Remaking* [illegible] (1923), p. [illegible]

which was first worked out by the Stoics As Ernest Barker says

> The rational faculty of man was concerned as producing a common conception of law and order which possessed a universal validity . . . This common conception included, as its three great notes, the three values of Liberty, Equality and the brotherhood or Fraternity of all mankind. This common conception, and its three great notes, have formed a European set of ideas for over two thousand years It was a set of ideas which lived and moved in the Middle Ages; and St. Thomas Aquinas cherished the idea of a sovereign law of nature imprinted in the heart and nature of man, to which kings and legislators must everywhere bow It was a set of ideas which lived and acted with an even greater animation from the days of the Reformation to those of the French Revolution Spoken through the mouth of Locke, [they had justified] the English Revolution of 1688, and had recently served to inspire the American Revolution of 1776 They were ideas of the proper conduct of states and governments in the area of internal affairs They were ideas of the natural rights of man—of liberty political and civic, with sovereignty residing essentially in the nation, and with free communication of thoughts and opinions, of equality before the law, and the equal repartition of public expenses among all the members of the public; of a general fraternity which tended in practice to be sadly restricted within the nation, but which could, on occasion, be extended by decree to protect all nations struggling for freedom.[7]

These traditions were expounded in the treatises of philosophers, were developed in the tracts of the publicists, were absorbed by the lawyers and applied in the courts At times of great stress some of the endangered traditions were committed to writing, as in the Magna Carta and the Declaration of Independence For the guidance of judges and lawyers, large portions were described—as in Lord Coke's examination of the common law The public philosophy was in part expounded in the Bill of Rights of 1689 It was re-enacted in the first ten amendments of the

[7] Sir Ernest Barker, *Traditions of Civility* (1948), pp. 10-12.

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[1] Barker, *Traditions of Civility* (1948), pp 10-12.

advantage in treating the struggle for the ultimate allegiance of men as not within the sphere of the public in- [illegible]

[illegible]

possible.

3 The Neglect of the Public Philosophy

WE COME, then, to a crucial question If the discussion of public philosophy has been, so to speak, tabled in the liberal democracies, can we assume that, though it is not [illegible]

[illegible] have to be [illegible]

[illegible] society, and they a [illegible] ties that do not a [illegible] this philosophy, it [illegible] impossible to reach intelligible and workable conceptions of popular election, majority rule,

* Cf. Mortimer Adler, "The Doctrine of Natural Law in Philosophy," *University of Notre Dame Natural Law Institute Pro-* [illegible] 65-84

[illegible] know how to do th s or that they [illegible] and scholars and popular educators have relegated the public philosophy to the attic, when they have treated it as no longer usable by modern and progressive men It [illegible] it has [illegible] to [illegible] modern men [illegible]

world, and submerged in the West by the decline and the fall of the Western empire Later on they were revived and renovated and remade in a great flowering of discovery and enterprise and creativity The revival of learning did not provide maps for Columbus to use in discovering America But it did produce much human wisdom which helped Columbus and his contemporaries to discover themselves and their possibilities

The ancient world, we may remind ourselves was not destroyed because the traditions were false They were submerged, neglected lost For the men adhering to them had become a dwindling minority who were overthrown and displaced by men who were alien to the traditions, having never been initiated and adopted into them May it not be that while the historical circumstances are obviously so different something like that is happening again?

4. *The Universal Laws of the Rational Order*

FOR OVER two thousand years says Barker European thought has been acted upon by the idea that the rational faculties of men can produce a common conception of law and order which possesses a universal validity This conception was first formulated as a theory by Zeno and the Stoics It was absorbed by the Roman lawyers was adopted by the Christian fathers was re-established and

busy man, wanting to know how to do this or that, they are now lamentably out of date The language is archaic, the idiom is strange, the images are unfamiliar, the practical precepts are addressed to forgotten issues

But this irrelevance and remoteness might be the dust which has settled during the long time when philosophers and scholars and popular educators have relegated the public philosophy to the attic, when they have treated it as no longer usable by modern and progressive men It is a neglected philosophy For several generations it has [illegible]

[illegible]

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it is a necessary assumption in the government of large and heterogeneous states Alexander came to it in spite of Aristotle's teaching to the contrary His practical experience compelled him to see that in an empire which included the Persians as well as the Greeks there had to be a common law which was valid for both To be valid for both the Greeks and the Persians, the law had in some significant degree to have their consent. The Persians could not be commanded and coerced

As in fact the laws were promulgated to the Persians y Alexander, who was a Greek, it was necessary to con-.ince the Persians that Alexander's laws reflected something that was higher than the will and the intentions of the Greeks, something that was binding on both the Greeks and the Persians That something was the faculty of distinguishing by reason the good and the bad For this faculty was not peculiar to the Greeks but was common to both Persians and Greeks

Alexander had discovered empirically what Zeno was to formulate theoretically—that a large plural society cannot be governed without recognizing that, transcending its plural interests, there is a rational order with a superior common law This common law is "natural" in the sense that it can be discovered by any rational mind, that it is not the willful and arbitrary positive command of the sovereign power [11] This is the necessary assumption without which it is impossible for different peoples with their competing interests to live together in peace and freedom within one community

The Roman lawyers worked out what Alexander had anticipated and what the Stoics taught By the time of Cicero there were says Barker, three different bodies and conceptions of law [12] The first, called *ius civile*, was applicable only to Roman citizens The second was a body of commercial laws known as the *ius gentium*, that were enforced by the Roman courts in all commercial cases "a common law of contract throughout the empire" [13]

The *ius gentium* was meant to contain what was common and universal separated from what was peculiar and

[11] Cf Otto von Gierke *Natural Law and the Theory of Society* translated with an Introduction by Ernest Barker (1934), Vol. I pp. 224 225

[12] *Ibid* p. xxxvi

[13] F de Zulueta "The Science of Law" in *The Legacy of Rome* edited by ... ey (Oxford, Clarendon Press ... 202

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[12] *Ibid* p xxxvi.

[13] F de Zulueta "The Science of Law," in *The Legacy of Rome*, edited by Bailey (Oxford, Clarendon Press, 1928), p. 20[illegible]

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secularism, to the progressive division and specialization of labor As the diversity of belief, opinion and interest became greater, the need for a common criterion and for common laws became more acute

The new school of natural law was able to meet this need until the end of the eighteenth century That was long enough to preside over the founding of the British and the American constitutional orders, and of those which derive from them But the school of natural law has not been able to cope with the pluralism of the later modern age—with the pluralism which has resulted from the industrial revolution and from the enfranchisement and the emancipation of the masses of the people

In the simple and relatively homogeneous society of the eighteenth century natural law provided the principles of a free state But then the mode of such thinking went out of fashion. In the nineteenth century little was done to remint the old ideas They were regarded as obsolete and false as hostile to the rise of democracy, and they were abandoned to the reactionaries The great frame of reference to the rational order was missing No body of specific principles and precepts was worked out in order to regulate international relations, nor to cope with the problems raised by the industrial revolution and the advance of science and technology

Yet, in this pluralized and fragmenting society a public philosophy with common and binding principles was more necessary than it had ever been The proof of the need is in the impulse to escape from freedom, which Erich Fromm has described so well [17] It has been growing stronger as the emancipation of the masses of the people from authority has brought the dissolution of public, general objective criteria of the true and the false, the right and the wrong "I can assure you," wrote André Gide in 1928 "that the feeling of *freedom* can plunge the soul into a sort of anguish" [18]

"We know it from within by a sort of immediate and personal experience" says Gilson who was writing between the wars that Western culture was steadily following its process of dissolution." [19] Similarly, Spengler's

[17] Erich Fromm *Escape from Freedom*

[18] *The Journals of André Gide* translated by Justin O'Brien (1947 51) Vol III 1928 1939 entry for Nov 15 1928 p 26

[19] Etienne Gilson, *The Unity of Philosophical Experience* (1937)

have become the "lonely crowd"[21] that Riesman has described They are Durkheim's anomic mass[22] They are Toynbee's proletarians who are "of" but not "in" the community they live in, for they have "no 'stake' in that community beyond the fact of its physical existence" Their "true hallmark is neither poverty nor humble birth but is the consciousness—and the resentment that this consciousness inspires—of being disinherited"[23] They are, as Karl Jaspers says, men dissolved into "an anonymous mass' because they are "without an authentic world, without provenance or roots,"[24] without, that is to say, belief and faith that they can live by

[21] David Riesman, *The Lonely Crowd*.
[22] Emile Durkheim *Suicide*
[23] Arnold Toynbee, *A Study of History* (1951) Vol I, p 41, Vol V p 63
[24] Karl Jaspers, *The Origin and Goal of History* translated from the German edition of 1949 by Michael Bullock (London Routedge and Kegan Paul Ltd. 1953) pp 127 128

In the prevailing popular culture all philosophies are [illegible]

wrong, beyond that which the preponderant mass of voters, consumers, readers, and listeners happen at the moment to be supposed to want.

There is no reason to think that this condition of mind can be changed until it can be proved to the modern skeptic that there are certain principles which, when they have been demonstrated, only the willfully irrational can deny, that there are certain obligations binding on all men who are committed to a free society, and that only the willfully subversive can reject them.

When I say that the condition of anomy cannot be corrected unless these things are proved to the modern skeptic, I mean that the skeptic must find the proof compel- [illegible]

[illegible] that the official doctrine lacked something in the way of evidence or of reason to carry full conviction. In the blood of the martyrs to intolerance are the seeds of unbelief

In order to repair the capacity to believe in the public philosophy, it will be necessary to demonstrate the practical relevance and the productivity of the public philosophy It is almost impossible to deny its high and broad generalities The difficulty is to see how they are to be applied in the practical affairs of a modern state

We are back, in a manner of speaking, before the Roman lawyers worked out the *ius gentium* and related it to the *ius naturale*, back with Alexander the Great, who understood the pressing need for common laws in a plural society, and with Zeno who formulated the higher [illegible]

high

velo

mercial power and the comparatively simple problems of a society based on landed property were already over taken by the problems of an economy in which property was owned as money, as commercial paper as stocks and bonds It was easy enough to assert rights to intangible property but difficult to define the duties of intangible property Yet unless that was done, property would not be under general laws

Blackstone is in a way a tragic figure in that, thanks to his education he had the intimation that the right direction was to work toward bringing intangible property under public standards Yet for one reason or another he did not take it. He was however, troubled. He knew that "nothing so generally engages the affections of mankind" as that sole and despotic dominion which one man claims and exercises over the external things of the world in total exclusion of the right of any other individual in the universe But as a man steeped in the civilized traditions of the West, he knew too that there must be rational limits put upon the acquisitive and possessive instincts As a man of the world that is to say of his world and of the world that was to come he knew also how little the rising men of property wished to hear about obligations that would limit their absolute rights

So with a certain regret, and perhaps with an intuitive foreboding he wrote that Pleased as we are with the possession, we seem afraid to look back to the means by which it was acquired as if fearful of some defect in our title not caring to reflect that (accurately and strictly speaking) there is no foundation in nature or in natural law why a set of words upon parchment should convey the dominion of land why the son should have a right to exclude his fellow-creatures from a determinate spot of ground because his father had done so before him or why the occupier of a particular field or of a jewel, when lying on his death bed and no longer able to maintain possession should be entitled to tell the rest of the world which of them should enjoy it after him " [4]

Blackstone thought that these questions which challenge 'the sole and despotic dominion" of the property holder would be useless and even troublesome in common life " As a man of his world he felt bound to say that "it is well if the mass of mankind will obey the laws when . . .

ercise "the sole and despotic dominion" over the land and the resources of nature The ultimate title does not lie in the owner The title is in "mankind," in *The People* as a corporate community. The *rights* of the individual in that patrimony are *creations* of the law, and have no other validity except as they are *ordained* by law. The purpose of laws which establish private property is not to satisfy the acquisitive and possessive *instincts* of the primitive man, but to promote "the grand ends of civil society"—which comprehend "the peace and security of individuals"

Because the legal owner enjoys the use of a limited necessity belonging to all men, he cannot be the sovereign [illegible]

[illegible]

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This is a doctrine of [illegible] pretension to a [illegible] stone, though [illegible] sole and despo[illegible] losophy and th[illegible] recognized theorists developed regressively the conception of private property as an absolute right. For a time they excluded from political philosophy, from jurisprudence and from legislation almost any notion that property had duties as well as rights

Absolute private property inevitably produced intolerable evils Absolute owners did grave damage to their neighbors and to their descendants they ruined the fertility of the land they exploited destructively the minerals under the surface, they burned and cut forests, they destroyed the wild life, they polluted streams, they cornered supplies and formed monopolies they held land and resources out of use, they exploited the feeble bargaining power of wage earners

For such abuses of absolute property the political scientists and the law makers had no remedy They had lost the tradition that property is the creation of the law for [illegible]

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Because the legal owner enjoys the use of a limited necessity belonging to all men, he cannot be the sovereign lord of his possessions He is not entitled to exercise his absolute and therefore arbitrary will. He owes duties that correspond with his rights His ownership is a grant made by the laws to achieve not his private purposes but the common social purpose And, therefore, the laws of property may and should be judged reviewed and, when necessary, amended so as to define the specific system of rights and duties that will promote the ends of society

This is a doctrine of private property which denies the pretension to a "sole and despotic dominion" When Blackstone, though his conscience was troubled, accepted the sole and despotic dominion, he broke with the public philosophy and the traditions of civility After his break the recognized theorists developed regressively the conception of private property as an absolute right. For a time they excluded from political philosophy from jurisprudence and from legislation almost any notion that property had duties as well as rights

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For such abuses of absolute property the political scientists and the law makers had no remedy They had lost the tradition that property is the creation of the law for social purposes They had no principles by which the law could deal th the abuses of property The individualists of t century could not, therefore, defend and

ciples which he stated so well. The earth is the general property of all mankind. Private titles of ownership are assigned by law making authorities to promote the grand ends of civil society. Private property is therefore, a system of legal rights and duties. Under changing conditions the system must be kept in accord with the grand ends of civil society.

Blackstone and his successors did not work out legal propositions from these principles.[7] As I am contending that it would have been better if they had done so, I now ask myself what is the validity of these principles? Are they devices, like the rules of the road for regulating the traffic? If they are only that then another set of assumptions could be just as valid, like the rule of the road Britain that one must drive to the left. One could, and fact men have, constructed systems of property on quite different assumptions—on the assumption, for example, that the earth is the general property of white men only, or of a master race of white men, or of those castes which have not sinned in a previous incarnation. But if the principles are more than that, if they have a validity which overrides such special claims, what is the virtue which gives them their validity?

They are the laws of a rational order of human society—in the sense that all men when they are sincerely and lucidly rational, will regard them as self-evident. The rational order consists of the terms which must be met in order to fulfill men's capacity for the good life in this world. They are the terms of the widest consensus of rational men in a plural society. They are the propositions to which all men concerned, if they are sincerely and lucidly rational, can be expected to converge. There could never be a consensus that Africa belongs to the descendants of the Dutch settlers. A property system founded on that pretension cannot be generally acceptable, and will generate disorder. The classical doctrine has a superior validity in that a system of property based upon it may obtain a consensus of support in the community, and would have the prospect of being workable.

When we speak of these principles as natural laws we must be careful. They are not scientific "laws" like the laws of the motions of the heavenly bodies. They do not describe human behavior as it is. They prescribe what it

[7] *Good Society*, Ch. 12.

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Blackstone and his successors did not work out legal propositions from these principles.[7] As I am contending that it would have been better if they had done so, I now ask myself what is the validity of these principles? Are they devices, like the rules of the road, for regulating the traffic? If they are only that, then another set of assump- …

… institution. But if the principles are more than that, if they have a validity which overrides such special claims, what is the virtue which gives them their validity?

They are the laws of a rational … bu… to … which consists of the terms which must be met in order to fulfill men's capacity for the good life in this world. They are the terms of the widest consensus of rational men in a plural society. They are the propositions to which all men concerned, if they are sincerely and lucidly rational, can be expected to converge. There could never be a consensus … the D… tensic… dison… that … of property based upon it may obtain a consensus of support in the …

… of the heavenly bodies. They do not describe human behavior as it is. They prescribe what it

[7] The Good Society, Ch. 12.

ciples which he stated so well. The earth is the general property of all mankind. Private titles of ownership are assumed by ha...

...

Blackstone and his successors did not work out feudal propositions from these principles." As I am ...

...

...at only that, then another set of assumptions could be just as valid, like the rule of the road in Britain that one must drive to the left. One could, and in fact men have, constructed systems of property on quite different assumptions—on the assumption, for example, that the earth is the general property of white men only or of a master race of white men, or of those castes which have not sinned in a previous incarnation. But if the principles are more than that, if they have a validity which overrides such special claims, what is the virtue which gives them their validity?

They are the laws of a rational order of human society—in the sense that all men, when they are sincerely and lucidly rational, will ... tional order con... order to fulfill ... world. They are the terms of the widest consensus of rational men in a plural society. They are the propositions to which all men concerned, if they are sincerely and lucidly rational, can be expected to converge. There could never be a consensus that Africa belongs to the descendants of the Dutch settlers: a property system founded on that pretension cannot be generally acceptable, and will generate disorder. The classical doctrine has a superior validity in that a system of property based upon it may obtain a consensus of support in the community, and would have the prospect of being workable.

When we speak of these principles as natural laws, we must be careful. They are not scientific "laws" like the laws of the motions of the heavenly bodies. They do not describe human behavior as it is. They prescribe what it

Society Ch. 12.

edge and survey of vice is in this world so necessary to the constituting of human virtue, and the scanning of error to the confirmation of truth, how can we more safely, and with less danger, scout into the regions of sin and falsity than by reading all manner of tractates and hearing all manner of reason?[9]

The method of dialectics is to confront ideas with opposing ideas in order that the pro and the con of the dispute will lead to true ideas But the dispute must not be treated as a trial of strength. It must be a means of elucidation In a Socratic dialogue the disputants are arguing co-operatively in order to acquire more wisdom than either of them had when he began In a sophistical argument the sophist is out to win a case, using rhetoric and not dialectic "Both alike," says Aristotle, "are concerned with such things [illegible]

[illegible] Divorced from its original purpose and justification, as a process of criticism, freedom to think and speak are not self-evident [illegible]

[illegible] of their truth, could not be a vital interest of a great state but for the presumption that they are the chaff which goes with the utterance of true and significant words

But when the [illegible]

[illegible] of speech [illegible] to get respected as a procedure of the truth and becomes the unrestricted right to exploit the

[9] Milton's *Areopagitica* (Oxford University Press, 1949), pp 18-19

[10] *Rhetoric* Bk I, Ch 1 1354a1 3

[11] *Topics* Bk. I, Ch. 2, 101b3-4

cern truth there are rules of evidence and of parliamentary procedure, there are codes of fair dealing and fair comment, by which a loyal man will consider himself bound when he exercises the right to publish opinions For the right to freedom of speech is no license to deceive, and willful misrepresentation is a violation of its principles It is sophistry to pretend that in a free country a man has some sort of inalienable or constitutional right to deceive his fellow men There is no more right to deceive than there is a right to swindle, to cheat, or to pick pockets It may be inexpedient to arraign every public liar, as we try to arraign other swindlers It may be a poor policy to have too many laws which encourage litigation about matters of opinion But, in principle, there [illegible] mounty for lying [illegible]

In o[illegible] tiples [illegible] modern [illegible] selves easily to a confrontation [illegible] ulication do not lend them [illegible] e cal process for finding truth works best when the same audience hears all the sides of the disputation This is manifestly impossible in the moving pictures if a film advocates a thesis, the same audience cannot be shown another film designed to answer it Radio and television broadcasts do permit some debate But despite the effort of the companies to let opposing views be heard equally, and to organize programs on which there are opposing speakers, the technical conditions of broadcasting do not favor genuine and productive debate For the [illegible] and tuning off [illegible] hear, eve[illegible] the main [illegible] tion Rare[illegible], and on very few public issues, does the mass audience have the benefit of the process by which truth is sifted from error—the dialectic of debate in which there is immediate challenge reply cross-examination, and rebuttal The men who regularly broadcast the news and comment upon the news cannot—like a speaker in the Senate or in the House of Commons—be challenged by one of their listeners and compelled then and there to verify their statements of fact and to re argue their inferences from the facts

Yet when genuine debate is lacking, freedom of speech does not work as it is meant to work It has lost the principle wh[illegible] lates it and justifies it—that is to say,

paper press taken as a whole, freedom is largely unrestricted by law Where confrontation is difficult, as in broadcasting, there is also an acceptance of the principle that some legal regulation is necessary—for example, in order to insure fair play for political parties When confrontation is impossible, as in the moving picture, or in the so-called comic books there will be censorship

4. *The Limits of Dissent*

THE counterrevolutionary movements have subjected the liberal democracies to severe stresses and strains how to insure their security and survival without abandoning their liberties. They are faced with popular movements, aided and abetted by unfriendly foreign powers, and employing the machinery of democratic governments to capture it and in order to abolish it. When they are working to attain power and before they do attain it, the fascist and communist parties invoke all the guarantees of the bill of rights all the prerogatives of popular parties of elections, of representation of the assemblies of tenure in the civil service But when they attain power they destroy the liberal democratic institutions on which, as on a broad staircase, they climbed to power

This exploitation of free institutions is, it seems to me, compelling proof that these institutions are inseparable from the public philosophy If the connection is forgotten, as is so generally the case in the contemporary democracies, free institutions are poorly defended by the liberal democracies They are the easy prey of their enemies Either the fascists seize power in order to forestall the communists, or the communists seize power to forestall the fascists

There is no equivocation in the public philosophy about the principle of the defense of free institutions. The rule is that the right to enjoy them and the duty to maintain them are inseparable The right to these institutions is, that is to say for those who adhere to them

The criterion of loyalty is an indubitable commitment to defend and preserve the order of political and civil rights The question of whether the liberal democratic states should outlaw, or in other ways contain counterrevolutionary movements is not one of principle but of expediency [illegible] practical prudence There is no doubt

already reached, on all it will be reached if time enough is given. The arbitrary will or other individual peculiarities of a sufficiently large number of minds may postpone the general agreement in that opinion indefinitely, but it cannot affect what the character of that opinion shall be when it is reached. This final opinion then is independent, not indeed of thought in general, but of all that is arbitrary and individual in thought: is quite independent of how you, or I, or any number of men, think.[13]

It is not possible to reject this faith in the efficacy of reason and at the same time to believe that communities of men enjoying freedom could govern themselves successfully

5 *The Mirror of History*

WE FIND, then, that the principle of freedom of speech, like that of private property, falls within the bounds of the public philosophy It can be justified applied, regulated in a plural society only by adhering to the postulate that there is a rational order of things in which it is possible, by sincere inquiry and rational debate, to distinguish the true and the false, the right and the wrong, the good which leads to the realization of human ends and the evil which leads to destruction and to the death of civility

The free political institutions of the Western world were conceived and established by men who believed that honest reflection on the common experience of mankind would always cause men to come to the same ultimate [illegible]

[13] Cited in Herbert W Schneider, *A History of American Philosophy* (1946), p 517 From a review of Fraser's *Works of George Berkeley* in *North American Review*, Vol CXIII (1871),

mitted. The new generation is faced with the task of rediscovering and re-inventing and relearning, by trial and error, most of what the guardians of a society need to know.

No one generation can do this. For no one generation ... for themselves the arts and ... than ... what their ancestors had already learned. They can do advanced experiments if they do not have to learn all over again how to do the elementary ones. That is why a so- ... only if it conserves its traditions. ... artres said, "like ... " enabled, there- ... nents and things more distant."[18]

But traditions are more than the culture of the arts and sciences. They are the public world to which our private worlds are joined. This continuum of public and private memories transcends all persons in their immediate and natural lives and it ties them all together. In it there is performed the *mystery by which individuals are adopted* and initiated into membership in the community.

The body which carries this mystery is the history of the community, and *its central theme is the great deeds* and the high purposes of the great predecessors. From them the new men descend and prove themselves by be- ...

... rules over the natural man, is at home in the good society. This second nature is no proletarian but feels itself to be a rightful proprietor and ruler of the community. Full al- ...

[18] Cited in Étienne Gilson, *The Spirit of Medieval Philosophy* (1940), p. 426.
[19] Karl Jaspers, *Origin and Goal of History* (1953), p. 271.

... of Athens. They are the appetites and instincts of

... y, would perhaps have said that it was only human ... he had the chance

... fication that the people of Athens who condemned Socrates were right in their judgment. As Crito says, when he has closed his eyes, "of all the men of his time whom I have known he was the wisest and justest and best."

... proprietor of the laws and institutions of Athens and of the ideal of life which they serve. The necessities and the purposes of Athenian life are not something outside of Socrates ...

... This is the inwardness of the ruling man—whatever his titles and his rank—that for the sake of his realm, of his order, of his regiment, of his ship, of his cause, he is the noble master of his own weaker and meaner passions. Although this is the aristocratic code, it is not inherent in prerogative and birth. It is functional to the capacity to rule. It is because aristocrats have been rulers, and not be-

[20] Ibid., 118.

CHAPTER TEN

The Two Realms

1 *The Confusion of the Realms*

AGAINST man living in the civilized tradition, who like ocrates rules his private impulses by the laws of the pub- c world, there are arrayed the great adversaries They mpt him with a total promise—that in a short and orious struggle they will take him into the earthly heaven where he will realize all his hopes The root of the mat- ter is in these two conceptions of the human condition, and the ultimate issue is in the conflict between them

As the bitter end has become visible in the countries of the total revolution, we can see how desperate is the pre- dicament of modern men The terrible events show that the harder they try to make earth into heaven, the more they make it a hell

Yet, the yearning for salvation and for perfection is most surely not evil, and it is, moreover, perennial in the human soul. Are men then doomed by the very nature of things to be denied the highest good if it cannot be ma- terialized in this world and if, as so large a number of modern men assume it will not be materialized in another world?

The answer to this question is known It can be had by recognizing the difference between the realm of existence where objects are materialized to our senses, and the realm of essence where they are present to the mind. I am using the ambiguous but irreplaceable word "essence" as meaning the true and undistorted nature of things The understanding of our relation to these two realms of be- ing is exceedingly difficult to communicate, so difficult that, as a matter of fact it has remained an esoteric wisdom

Yet if there is a way out of the modern predicament it begins I believe where we learn to recognize the differ ence between the two realms For the radical error of the mod rn democratic gospel is that it promises, not the good life of this world but the perfect life of heaven The root



There is a meaning given to the word "liberty" by Locke: "the power a man has to do or forebear doing any particular action."[4] Here we are not free merely because we *may* do something: we must also be able to do it—we must have the faculty for doing it and the means to do it.

The word "freedom" has still another meaning in the classical and Christian tradition. As Montesquieu put it, freedom "can consist only in the power of doing what we ought to will, and in not being constrained to do what we ought not to will."[5] We are free if we have the fac[illegible] of knowing wh[illegible]

These [illegible] ambiguit[illegible] complex [illegible] For when any one of the meanings is put to a practical test, almost [illegible]



There is a meaning given to the word "liberty" by Locke "the power a man has to do or forebear doing any particular action"[3] Here we are *not free* merely because we *may* do something; we must also be able to do it—we must have the faculty *for doing* it and *the means* to do it.

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These are not merely verbal differences, arising from [illegible]biguity or equivocation. They are rather facets of a [illegible]mplex idea. For when any one of the meanings is put [illegible] to [illegible] here- [illegible] the [illegible]hers, or, in fact, to *come to* rest in a conclusion which [illegible]ses a total meaning.

[illegible] of [illegible] al [illegible] in [illegible] ur- [illegible] to [illegible] op-position from its neighbors Its rivals and enemies will destroy it unless it can buy them off by compromising some part of its original pretentions "[4]

Words like liberty equality, fraternity, justice, have various meanings which *reflect* the variability of the flux of things The different meanings are rather like different clothes each good *for a season for certain* weather and for a time of day none good for all times In the infinite change and diversity of the actual world, our conceptual definitions are never exactly and finally the whole truth For, as James said, while "the essence of life is its continually changing character our concepts are all discontinuous and fixed." Like a winter overcoat, none can

[3] John Locke, *An Essay Concerning Human Understanding* edited by A. C. Fraser (Oxford, Clarendon Press, 1824), Vol I Bk. II. Ch. XXI Sec. 15

deficiency But that is not the true mean Courage is not half cowardice and half rashness Temperance is not half self indulgence and half complete abstinence. The true mean is at the tension of push and pull, of attraction and resistance among the extremes

The outcome, as Aristotle said it would be, is imprecise and inconclusive, and there is little reason to think that the wisdom of the world can ever rise above these imperfections

3 *The Law and the Prophets*

NOR DOES the wisdom of the spirit solve precisely the perplexing problems of worldly conduct. For it is the vision of a realm of being in which the problems of earthly existence are not solved but transcended.

In the immediate, urgent, and particular issues of daily life the major prophets, the seers and the sages, have remarkably little to offer by way of practical advice and specific guidance The deposit of wisdom in the Bible and in the classic books does not contain a systematic and comprehensive statement of moral principles from which it is possible to deduce with clarity and certainty specific answers to concrete questions. He who goes to this wisdom looking for guidance of this sort will be disappointed. If he finds it there, he must come to it by analogy and by inference The specific rules of conduct are not explicitly there. Were they there, the history of mankind would have been different. For terrible wars and poisonous hatreds arise among men who draw irreconcilably different practical conclusions from the same general principles

There is a hiatus between the highest wisdom and the actual perplexities with which men must deal. An encyclopedia of all that the prophets and the philosophers have taught will not tell a man clearly and definitely how to make laws, how to govern a state, how to educate his children—how, in fact, to decide the problems that the priest encounters in the confessional, the doctor with his patients, the lawyer with his clients, the judge with the litigants, the man of affairs in his business

Faced with practical decisions, they need to know what choice they should make among the alternatives But concrete guidance of this sort can be found only incidentally in the prophets and the philosophers. They

deficiency [illegible]
ha[illegible]
sel[illegible]
m[illegible]
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are reference books to guide the priest in the confessional concerning the great variety of human issues.*

The great multitudes of men everywhere and always have demanded detailed codes of conduct. They are neces-

contact with the existential world.

4. *The Realm of the Spirit*

FOR THE vision is not of this world but of another and radically different one. The Apostles, as a matter of fact, believed themselves to be living in the last days of the world, and they made no provision for a systematic and definitive record of the sacred deposit. But even if they

it has the common man Aquinas remarks that the good do not bear with the wicked to the extent of enduring the injuries done to God and their neighbors, St. Chrysostom says that "it is praiseworthy to be patient under one's own wrongs, but the height of impiety to dissemble injuries done to God"[10]

The saying disintegrates when we attempt to treat it as a specific rule of political conduct. What, then, is its wisdom? It is not the wisdom of the public world and of how

me the law and the prophets of the Old Testament, "hath concluded all under sin" They are addressed to unregenerate men, to men as they are in the world, to the sons of Adam and Eve who have suffered what Aquinas called "wounding of nature" In them, "reason' has lost 'its perfect hold over the lower parts of the soul"

"The law' says Saint Paul, "was our schoolmaster" It corrected our ignorance, malice, weakness and lust But after the faith in Christ is come, "we are no longer under a schoolmaster" When our passions are transformed by allegiance to the other realm of being, we do not need to be disciplined. The regenerate man, says Saint Paul, is not conformed to this world but is transformed in the renewing of his mind.[12] In the City of God, says St Augustine, "sin shall have no power to delight," and men will "not be able to sin'[13] They are led of the spirit and have been "redeemed." They can, as Confucius said, follow what their hearts desire without transgressing what is right

5 *The Balance of Powers*

As A MAN awakens from his primordial condition where, as Bacon said, custom is the principal magistrate of his life, he finds himself living in two worlds and subject to two allegiances There is the familiar world which he knows through his senses and there is a world of which he has only intimations and knows only through the eyes of his mind He is drawn between the two disparate realms of being, and the tension within them is the inexhaustible theme of human discourse To neither can he give his whole allegiance Their prevailing contrasts are his wretchedness Their occasional harmonies in the lives of saints and the deeds of heroes and the excellence of genius are his glory

In the traditions of civility the prevailing view has been that the two realms are inseparable but disparate, and that man must work out his destiny in the balance, which is never fixed finally between the two

This is a view which has however, always been challenged. There are the hedonists who would withdraw wholly *into* the realm of existence, to eat, drink and be

[12] Romans XII 2.
[13] *The* ... XXII 30

strong enough to ...
righting of th...
from the opp...
its opportun...

But while the separation of the powers of the ...
and of the state is ...
them, the ne...
right relation...
autonomous, a...
the issues of good and evil. ... must also meet on all

These issues arise concretely in the fixing of public policy about the family, marriage, divorce, the authority of the father and of the mother, the guardianship of children, education, inheritance, the distribution of wealth, crime and punishment, standards of taste, loyalty and allegiance, righteous and unrighteous war. These issues, as Pope Leo XIII said in the Encyclical *Immortale Dei* (1885), belong "to the jurisdiction and judgment of both" the ecclesiastical and the civil power. In all these matters the final word is in neither of the two realms of being. There is in truth no final word. Instead there are the provisional points of equilibrium of an unending tension among variable elements. Where exactly the point of equilibrium will be in a particular place and at a particular time cannot be defined *a priori*. It must be judged empirically within the postulates of the public philosophy. For the elements which have to come into equilibrium are variables. That is why governing is not engineering but an art. That is why the same constitution and codes of laws cannot, like the plans for a jet engine, be used by all countries at any time or by any country all the time.

6 *The Mechanics of the Balance*

THE IDEA of the balancing of powers among states and within them has been used so long by so many, in such different circumstances and with such different intentions, that it is not, as a recent critic puts it, "free from philological, semantic and theoretical confusion."[14]

[14] Ernst B. Haas, "The Bal... or P...

other they are neutralized, and his power may then be sufficient to govern them.

This, we may say, is the mechanical principle by which the perpetual and restless desire for power after power is brought into an order The desire for power has to be reduced. This can rarely be done, and never for long, by an omnipotent ruler Tyranny, as Aristotle observed long ago, is short-lived [19] Nor can the desire for power be reduced sufficiently by education and exhortation As Montesquieu said, ". . . constant experience shows us that every man invested with power is apt to abuse it, and to carry his authority as far as it will go Is it not strange though true, to say that virtue itself has needs of limits? To prevent this abuse it is necessary from the very nature of things that power should be checked by power"[20]

In the measure that power is checked by power, that opposing powers are in balance, neither can prevail Both are constrained within a common situation In this condition when the ponderable forces are in balance, neither being able or willing to exert decisive force, the imponderable means of reason become efficacious

Inter arma silent leges In the clash of arms the laws are silent. We may add that in the truce of arms the laws are heard.

Like any technical procedure, the balancing of power to neutralize power can be used for good, bad and indifferent ends There are many who would say that the good end which politicians always profess is merely the rationalization of the perpetual and restless desire for power after power "The truth of the matter," said Nicholas Spykman,[21] "is that states are interested only in a balance which is in their favor . . . the balance desired is the one which neutralizes other states, leaving the home state free to be the deciding force and the deciding voice"

But of what "matter" is this the "truth"? That particular states and we may add, particular parties, factions, and individual politicians, are interested "in a balance which is in their favor" No doubt they are No doubt they have Hobbes' desire for power after power This is

[19] *Politics* Book V, Ch. 12, 1315b13
[20] Montesquieu, *op. cit.* Book XI Sec. 4
[21] N. Sp[illegible] *Strategy in World Politics* (1942), pp

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[19] *Politics*, Book V Ch. 12, 1315b13
[20] Mont [illegible] *op cit.*, Book XI Sec 4
[21] N [illegible] *American Strategy in World Politics* (1942) pp
21 25.

CHAPTER ELEVEN

The Defense of Civility

1 *The Thesis Restated*

WE HAVE now made a reconnaissance in the public philosophy in order to test the chances of its revival Our warrant for making this attempt rests on certain general findings about the condition of the Western world.

The first is that free institutions and democracy were conceived and established by men who adhered to a public philosophy Though there have been many schools in this philosophy, there are fundamental principles common to all of them that, in Cicero's words, "law is the bond of civil society," and that all men, governors and the governed, are always under, are never above, laws, that these laws can be developed and refined by rational discussion, and that the highest laws are those upon which all rational men of good will, when fully informed, will tend to agree

The second finding from which we have proceeded, in our inquiry, is that the modern democracies have abandoned the main concepts, principles, precepts, and the general manner of thinking which I have been calling the public philosophy I hold that liberal democracy is not an intelligible form of government and cannot be made to work except by men who possess the philosophy in which liberal democracy was conceived and founded. The prospects of liberal democracy in this time of mighty counterrevolutions are therefore bound up with the question whether the public philosophy is obsolete or whether it can be revived, reunited and renewed

I believe that the public philosophy can be revived, and the reconnaissance which we have made has been a demonstration that when it is applied to such central concepts as popular sovereignty, property, freedom of speech, and education, the public philosophy clarifies the problems and opens the way towards rational and acceptable solutions The revival of the public philosophy depends [illegible]ther its principles and precepts—which

or even strictly speaking imagined in visual or tangible terms Yet these essences these abstractions, which are out of sight and out of touch, are to have and to hold men's highest loyalties

The problem of communication is posed because in the modern world, as it is today, most men—not all men to be sure, but most active and influential men—are in practice positivists who hold that the only world which has reality is the physical world Only seeing is believing. Nothing is real enough to be taken seriously, nothing can be a matter of deep concern, which cannot, or at least might not, somewhere and sometime, be seen, heard, tasted, smelled or touched

Julius Caesar was a real person because we feel sure we could have seen him in Rome had we been there in his lifetime By the same kind of popular common sense, communities have believed that werewolves were real. Had not a woman named Thiebenne Paget admitted that she was one of the wolves that was seen on July 18 1603 in the District of Couvres?[1] To common sense the real is what, but only what we believe has weight, mass energy

> What's Hecuba to him or he to Hecuba that he should weep for her?

What are the ideas and ideals the laws and the obligations, of the rational order if like Hecuba, they are not flesh and blood?

Common sense is positivist and credulous, and the usual human way of satisfying it has been to materialize ideas when those ideas had to be treated as real Men have incarnated the gods they have re-embodied their ancestors they have personified the laws, they have hypostasized their ideas They have made the abstractions and universals intelligible in concrete terms, and so matters of genuine concern by connecting them with the realties of everyday experience

The difficulty of communicating imponderable truths to common sense is not a new one Through the ages truths that could not be materialized have been regarded as esoteric, and communicable only to an initiated few

[1] *The B[illegible] Folktales* arranged and edited by James R. Fo[illegible]

or even strictly speaking imagined in visual or tangible terms Yet these essences, these abstractions, which are out of sight and out of touch, are to have and to hold men's highest loyalties

The problem of communication is posed because in the modern world, as it is today, most men—not all men to be sure, but most active and influential men—are in practice positivists who hold that the only world which has reality is the physical world Only seeing is believing. Nothing is real enough to be taken seriously, nothing can be a matter of deep concern, which cannot, or at least might not, somewhere and sometime, be seen, heard, tasted, smelled, or touched.

Julius Caesar was a real person because we feel sure we could have seen him in Rome had we been there in his lifetime By the same kind of popular common sense, communities have believed that werewolves were real d not a woman named Thiebenne Paget admitted that : was one of the wolves that was seen on July 18, 03, in the District of Couvres?[1] To common sense the al is what, but only what we believe has weight mass, ergy

> What's Hecuba to him or he to Hecuba, that he should weep for her?

What are the ideas and ideals the laws and the obligaons, of the rational order if, like Hecuba, they are not sh and blood?

Common sense is positivist and credulous, and the usual human way of satisfying it has been to materialize deas when those ideas had to be treated as real. Men have incarnated the gods they have re-embodied their ancestors, they have personified the laws, they have hypostasized their ideas They have made the abstractions and universals intelligible in concrete terms, and so matters of genuine concern by connecting them with the realties of everyday experience

The difficulty of communicating imponderable truths to common sense is not a new one Through the ages truths that could not be materialized have been regarded as esoteric, and communicable only to an initiated few

[1] *The World's Great Folktales* arranged and edited by James R.

The Gospels state that there were mysteries which Jesus could unveil only to a few. He said, 'He who has ears to hear, let him hear."[2] But—

> "When he was alone, those who were about him with the twelve asked him concerning the parables. And he said to them "To you has been given the secret of the kingdom of God, but for those outside everything is in parables . . ."[3]

Only privately to his own disciples, says Mark, did he explain "everything', to 'the whole crowd' he spoke the word "as they were able to hear it, he did not speak to them without a parable"

Why? Because, says Dante, the divine mysteries are beyond the reach of human understanding—

> It is needful to speak thus to your wit since only through *objects of sense does it apprehend that which it afterwards would make worthy of the intellect.* For this the scripture condescends to your capacity, and attributes feet and hands to God, and means otherwise.[4]

There is a need to condescend to our capacity because as Paul Tillich puts it, It is impossible to be concerned

concern about it. The completely concrete being, the individual person, is the object of the most radical concern—the concern of love' There is in consequence, he says, an 'inescapable inner tension in the idea of God"—between God conceived as transcending all that is particular and finite, on the one hand, and the concreteness of an image of God on the other In order to have a human concern there is needed a "being to being relationship . . . a concrete God, a God with whom man can deal' in his religious experience[5]

While Tillich is a theologian examining the meaning

[2] The Gospel According to St. Mark, IV 9
[3] *Ibid* IV 10-12.
[4] *Divine Comedy* translated by C. E. Norton (1941) *Paradise* Canto IV verses 40-45
[5] Paul Tillich, *Systematic Theology* (1951), Vol I Part II p 211

of God, which he defines as the "name for that which concerns men ultimately," his findings illuminate the problem which we are studying. How can men be concerned effectively with ideas and ideals that transcend their personal experience and cannot be verified empirically in the realm of existence? The principles of the good society call for a concern with an order of being—which cannot be proved existentially to the sense organs—where it matters supremely that the human person is inviolable, that reason shall regulate the will, that truth shall prevail over error

Because it is difficult to care about that which is not concrete, there is in Tillich's language, "a tension in human experience" In order to become concerned about, to feel committed to, transcendent objects, we have to believe in them to believe in them they *must* be concrete they must in fact or in imagination be drawn into the orbit of our sense organs But as we condescend in this fashion to our capacity, attributing foot and hand to God, the belief becomes involved with, often dependent upon, the materialization Because of this dependence, the belief is vulnerable For a little knowledge, as for example that the foot and hand are a metaphor, may destroy the belief.

3 *Constitutionalism Made Concrete*

EARLY in the history of Western society political thinkers in Rome hit upon the idea that the concepts of the public philosophy—particularly the idea of reciprocal rights and duties under law—could be given concreteness by treating them as contracts In this way, freedom emanating from a constitutional order has been advocated explained, made real to the imagination and the conscience of Western men, by establishing the presumption that civilized society is founded *on a* public social contract.

A contract is an agreement reached voluntarily, *quid pro quo* and likely, therefore, *to* be observed—in any event, rightfully enforceable Being voluntary, it has the consent of the parties The presumption is not only that one party has acceded to what the other party proposed, but also that, in the original meaning of the word, both parties have consented—that they have thought, felt and

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taste"[7] It is necessary somehow to give authority to these unwritten laws, to invest them in some way with the reality of concreteness The public philosophers drew by analogy upon the Roman Law, which presumed that in certain cases an agreement had been reached and an obligation incurred by acts unaccompanied by any express pact (*quasi ex contractu*)[8]

The general idea that the unwritten laws of public [illegible]

[illegible] standings The Ark of the Covenant, says Deuteronomy, contained the two tables of stone on which were written [illegible]

[illegible] omy have convinced the Israelites that they must obey the Ten Commandments? They would not have gotten much obedience to the Commandments if they had told the Israelites that it was not certain, but merely probable, that they had been drawn up by Moses himself, and that it could be assumed that the Commandments reflected the considered judgment of Moses of how best to promote the greatest happiness of the greatest number of Israelites The Ten Commandments had a better chance of being obeyed by the Israelites if they were written by God, rather than by another Israelite And it was easier to believe that God did write them if, once upon a time, the two tables of stone had been deposited in the Ark of the Covenant.

Many in the modern age have rejected the idea of the contractual basis of power because, as a matter of fact, there never was an historic contract. Bentham, for example, knew that the two tables of stone could not be found and he wrote that "the origination of governments from a contract is a pure fiction, or in other words a

[7] Lord Moulton, "Law and Manners," in *Atlantic Monthly* (July 1924)

[8] Charles Howard McIlwain, *The Growth of* [illegible] *the W* [illegible]

4. *The Language of Accommodation*

MEN HAVE been laboring with the problem of how to make concrete and real what is abstract and immaterial ever since the Greek philosophers began to feel the need to accommodate the popular Homeric religion to the advance of science. The theologians, says Aristotle, are like the philosophers in that they promulgate certain doctrines, but they are unlike them in that they do so in mythical form.[11]

The method of accommodation employed by the philosophers has been to treat the materialization in the myth as allegory, as translation of the same knowledge into another language.[12] To converse with the devil, for example, could then mean what literally it says—to talk face to face with the devil, a concrete personage. But it could mean, also, the imitation of a wicked nature without—as the Cambridge Platonist John Smith wrote, "a mutual local presence,[13] that is to say without meeting a devil in person. This was an accommodation to those who, believing in the wickedness of evil, could not believe in the personified devil. The devil could mean either "some apostate being" and also "the spirit of apostasie which is lodged in all men's natures." This is the method of plural interpretation, it uses "the language of accommodation." It is justified and legitimate, said John Smith in his discourse entitled "A Christian's Conflicts and Conquests," because "truth is content, when it comes into the world, to wear our mantles, to learn our language, to conform itself as it were to our dress and fashions . . . it speaks with the most idiotical sort of men in the most idiotical way, and becomes all things to all men, as every sonne of truth should do for their good."[14]

[11] Werner Jaeger *The Theology of the Early Greek Philosophers* (The Gifford Lectures 1936) p. 10 Cf. Aristotle, *Metaphysics* Bk. III Ch. 4 1000a 4-18

[12] Cf Basil Willey *The Seventeenth Century Background* (1952) Ch. IV

[13] *Ibid.*, p. 138 et seq

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[14] *Ibid*

that despite the innumerable learned controversies of the lawyers, the theologians and the philosophers "all were agreed that there was natural law, which, on the one hand, radiated from a principle transcending earthly power, and on the other hand was true and perfectly binding law . . . the highest power on earth was subject to the rules of natural law They stood above the Pope and above the Kaiser above the ruler and above the sovereign people nay above the whole community of mortals Neither statute nor act of government neither resolution of the people nor custom, could break the bounds that thus were set. What ever contradicted the eternal and immutable principles of natural law was utterly void and would bind no one"[11]

But though there was agreement on this, there was deep controversy over whether the natural laws were the commands of God or whether they were the dictates of an eternal reason, grounded on the being of God, and unalterable even by God himself How were men to imagine to materialize and make concrete the natural law which is above the Pope and the Kaiser and all mortals? As decrees of an omniscient and omnipotent heavenly king? Or as the principles of the nature of things? There were some who could not conceive of binding laws which had to be obeyed unless there was a lawgiver made in the image of the human lawgivers they had seen or heard about There were others to whose capacity it was not necessary to condescend with quite that much materialization.

The crucial point however is not where the naturalists and supernaturalists disagreed It is that they did agree that there was a valid law which, whether it was the commandment of God or the reason of things was transcendent. They did agree that it was not something decided upon by certain men and then proclaimed by them It was not someone's fancy someone's prejudice some one's wish or rationalization, a psychological experience and no more It is there objectively not subjectively It can be discovered It has to be obeyed.

[11] Otto von Gierke *Political Theories of the Middle Age* translated with an Introduction by Frederick William Maitland (Cambridge University Press, 1927) Cf. pp. 73-87 and more especially Note 256.

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And why, we may ask, is there among such modern philosophers as these no concern like that of their great predecessors, to find an accommodaton? It is not only because they themselves have ceased to believe in the metaphors—in the sacred images They have ceased to believe that behind the metaphors and the sacred images there is any kind of independent reality that can be known and must be recognized.

Thus they reject "the concept of 'truth' as something dependent upon facts largely outside human control," which, as Bertrand Russell says, "has been one of the ways in which philosophy hitherto has inculcated the necessary element of humility When this check upon pride is removed, a further step is taken on the road towards a certain kind of madness—the intoxication of power which invaded philosophy with Fichte . and to which modern men, whether philosophers or not, are prone I am persuaded that this intoxication is the greatest danger of our time, and that any philosophy which, however unintentionally, contributes to it is increasing the danger of vast social disaster"[18]

7 The Mandate of Heaven

At the end, then, the questions are how we conceive of ourselves and the public world beyond our private selves Much depends upon the philosophers For though they are not kings, they are, we may say, the teachers of the teachers "In the history of Western governments," says Francis G Wilson[19] "the transitions of society can be marked by the changing character of the intellectuals," who have served the government as lawyers, advisers, administrators, who have been teachers in the schools, who have been members of professions like medicine and theology It is through them that doctrines are made to

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If the decline of the West under the misrule of the people is to be halted it will be necessary to alter these terms of discourse They are now set overwhelmingly against the credibility and against the rightness of the principles of the constitutional state, they are set in favor of the Jacobin conception of the emancipated and sovereign people

I have been arguing, hopefully and wishfully, that it may be possible to alter the terms of discourse if a convincing demonstration can be made that the principles of the good society are not, in Sartre's phrase, invented and chosen—that the conditions which must be met if there is to be a good society are there, outside our wishes, where they can be discovered by rational inquiry, and developed and adapted and refined by rational discussion

If eventually this were demonstrated successfully, it would, I believe, rearm all those who are concerned with the anomy of our society with its progressive barbarization, and with its descent into violence and tyranny Amidst the quagmire of moral impressionism they would stand again on hard intellectual ground where there are significant objects that are given and are not merely projected, that are compelling and are not merely wished Their hope would be re-established that there is a public world, sovereign above the infinite number of contradictory and competing private worlds Without this certainty, their struggle must be unavailing.

As the defenders of civility they cannot do without the signs and seals of legitimacy, of rightness and of truth For it is a practical rule well known to experienced men, that the relation is very close between our capacity to act at all and our conviction that the action we are taking is right. This does not mean of course, that the action is necessarily right. What is necessary to continuous action [illegible] it shall be *believed* to be right

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